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17161

RECORDATION NO. _____ FILED NO.

DEC 31 1990 -2 50 PM

INTERSTATE COMMERCE COMMISSION

December 31, 1990

The Honorable Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, DC 20423

17161

RECORDATION NO. _____ FILED NO.

DEC 31 1990 -2 50 PM

INTERSTATE COMMERCE COMMISSION

Dear Secretary Strickland:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are the original and one counterpart each of (1) Purchase and Lease Agreement, dated as of December 31, 1990, a primary document, among Cargill, Incorporated, a Delaware corporation, ("Lessee"), The CIT Group/Equipment Financing, Inc., a New York corporation, ("Lessor") and Helm Financial Corporation, a California corporation ("Seller"), and (2) Railcar Acceptance and Equipment Schedule, dated December 31, 1990, a secondary document.

The names and address of the parties to the enclosed documents are as follows:

LESSEE:	Cargill, Incorporated P.O. Box 5621 Minneapolis, MN 55440
LESSOR:	The CIT Group/Equipment Financing, Inc. 1400 Renaissance Drive Suite 312 Park Ridge, IL 60068
SELLER:	Helm Financial Corporation One Embarcadero Center San Francisco, CA 94111

DEC 31 2 49 PM '90
NOTED FOR RECORDATION

A general description of the railroad equipment covered by the enclosed documents is attached hereto as Schedule I.

DONELAN, CLEARY, WOOD & MASER, P. C.

The Honorable Sidney L. Strickland, Jr.

December 31, 1990

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The undersigned is the attorney-in-fact of Lessee, Lessor and Seller mentioned in the enclosed documents and has knowledge of the matters set forth therein.

Please return the original of the enclosed documents to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., 1275 K Street, N.W., Suite 850, Washington, DC 20005, or to the bearer hereof.

Also enclosed is a remittance in the amount of \$30.00 for the required recording fee.

Short summaries of the documents to appear in the index follows:

PRIMARY DOCUMENT:

Purchase and Lease Agreement, dated as of December 31, 1990, ("Lease") among Cargill, Incorporated, ("Lessee"), The CIT Group/Equipment Financing, Inc., ("Lessor") and Helm Financial Corporation ("Seller") relating to 137 rebuilt 100 ton roller bearing 4750 aluminum covered hopper railcars as listed in Schedule I to the Lease, including those 10 rebuilt 100 ton roller bearing 4750 aluminum covered hopper railcars listed in the accompanying Railcar Acceptance and Equipment Schedule, dated December 31, 1990, bearing Lessee's Identification Nos. CLSX304, 306, 308, 311, 313, 314, 315, 316 and 319 (corresponding to original Identification Nos. SCL 835208, SBD 249078, SBD 249084, SBD 249092, SBD 249121, SBD 249148, SBD 249152, CSXT 249158, SCL 835129 and SAL 35141 respectively). 

SECONDARY DOCUMENT:

Railcar Acceptance and Equipment Schedule, dated December 31, 1990, relating to the Purchase and Lease Agreement, dated as of December 31, 1990, among Cargill, Incorporated, ("Lessee"), The CIT Group/Equipment Financing Inc. ("Lessor") and Helm Financial Corporation ("Seller"), relating to 10 rebuilt 100 ton roller bearing 4750 aluminum covered

DONELAN, CLEARY, WOOD & MASER, P. C.

The Honorable Sidney L. Strickland, Jr.

December 31, 1990

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hopper railcars bearing Lessee's Identification Nos. CLSX 303^{JKM}, 304, 306, 308, 311, 313, 314, 315, 316 and 319 (corresponding to original Identification Nos. SCL 835208, SBD 249078, SBD 249084, SBD 249092, SBD 249121, SBD 249148, SBD 249152, CSXT 249158, SCL 835129 and SAL 35141 respectively).

Very truly yours,

CARGILL, INCORPORATED
THE CIT GROUP/EQUIPMENT
FINANCING INC.
HELM FINANCIAL CORPORATION

By John K. Maser III

John K. Maser III
Attorney-in-Fact

004/FS
Attachments

Schedule I

Description of Railcars

**(10) REBUILT 100 TON ROLLER BEARING 4750 ALUMINUM COVERED
HOPPER RAILCARS ACCEPTED DECEMBER 1990.**

LESSEE'S		ORIGINAL REPORTING	
NEW REPORTING MARK	CAR NUMBER		
CLSX	301	SCL	835208
CLSX	304	SBD	249078
CLSX	306	SBD	249084
CLSX	308	SBD	249092
CLSX	311	SBD	249121
CLSX	313	SBD	249148
CLSX	314	SBD	249152
CLSX	315	CSXT	249158
CLSX	316	SCL	835129
CLSX	319	SAL	35141

Interstate Commerce Commission
Washington, D.C. 20423

12/31/90

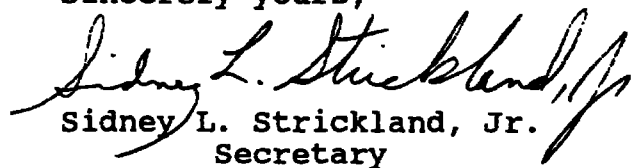
OFFICE OF THE SECRETARY

John K Maser III
Attorney In Fact
Donelan, Cleary, Wood & Maser
1275 K Street N.W. Suite 850
Washington, D.C. 20005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/31/90 at 2:50pm, and assigned recordation number(s). 17161 & 17161-A

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

PURCHASE AND LEASE AGREEMENT

17161
DEC 31 1990 -2 50 PM
INTERSTATE COMMERCE COMMISSION

dated as of December 31, 1990

among

THE CIT GROUP/EQUIPMENT FINANCING, INC.

("Lessor")

and

CARGILL, INCORPORATED

("Lessee")

and

HELM FINANCIAL CORPORATION

("Helm")

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PURCHASE AND LEASE AGREEMENT

PURCHASE AND LEASE OF RAILROAD EQUIPMENT, dated as of December 31, 1990 among CARGILL, INCORPORATED, a Delaware corporation ("Lessee"), THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York corporation ("Lessor") and HELM FINANCIAL CORPORATION, a California corporation ("Helm").

SECTION 1. PURCHASE AND LEASE

Pursuant to the terms and conditions of this Purchase and Lease Agreement (hereinafter, the "Lease"), (i) Helm agrees to sell and Lessor agrees to purchase the certain rail cars described in Schedule I hereto (together with all attachments, additions, accessories, replacement parts, substitutions and repairs incorporated therein, the "Rail Cars") in one or more transactions, each such purchase and sale to occur only upon the execution by Lessee of a Rail Car Acceptance and Equipment Schedule (as such term is defined below) pertaining to one or more such rail cars; and (ii) on that same date, Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor such Rail Cars as are identified in such Rail Car Acceptance and Equipment Schedule(s) which are or may from time to time be executed by Lessor and Lessee and attached hereto or incorporated herein by reference ("Equipment Schedules"; the form of such Equipment Schedule being attached hereto as Exhibit A).

SECTION 2. DEFINITIONS

Unless otherwise defined herein, capitalized terms shall have the meanings set forth below for all purposes of this Lease and the Equipment Schedules (as modified, amended or supplemented from time to time) and such meanings shall be equally applicable to both the singular and plural forms of terms therein or herein defined.

"After-Tax Basis" shall mean an amount which, after deduction of all Federal and State income tax required to be paid by Lessor in respect of the receipt of such amount, is equal to the payment required under the provisions of this Lease (assuming for this purpose that the amount of Federal and State income tax shall be computed on the basis that all of Lessor's income is subject to tax at the maximum Federal and State income tax rates applicable to corporations for the year in which such payment is made).

"Basic Rent" shall have that meaning specified in Section 5.1.

"Basic Term" means the period beginning on May 15, 1991 and ending on May 15, 2006.

"Basic Term Commencement Date" means May 15, 1991.

"Bill of Sale" means each Bill of Sale and Assignment executed and delivered by Helm pursuant to Section 4 of this Lease substantially in the form of Exhibit B hereto.

"Business Day" means any day other than (i) a Saturday or Sunday, and (ii) a day on which state or national banking institutions are authorized or obligated by law to remain closed in the City of New York or the State of Minnesota.

"Casualty Occurrence" with respect to any Rail Car means any of the following events: (i) a Rail Car shall be or become lost, stolen, destroyed, or, in the reasonable good faith opinion of Lessee, irreparably damaged, from any cause whatsoever during the Basic Term or any Renewal Term hereof or until the Rail Car is returned pursuant to Section 18 or Section 21 of the Lease, or, to the extent provided by Section 21 hereof, during any storage period, or (ii) the Rail Car shall be permanently returned to the Restorer thereof due to a material breach of the Restorer's warranty contained in the Reconstruction Agreement or other warranty agreement, or (iii) title to the Rail Car shall be taken by any governmental entity by condemnation or otherwise, or (iv) use of the Rail Car shall be taken or requisitioned (a) by condemnation or otherwise resulting in loss of possession by the Lessee for 90 consecutive days or (b) by the United States Government for a period which equals or exceeds or is expected to equal or exceed the shorter of (I) the then remaining term of the Lease or (II) a period of two years.

"Casualty Payment Date" means the next succeeding Stipulated Loss Value payment date referenced in Exhibit D following the date of a Casualty Occurrence.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Default" means any act or occurrence which, with notice or lapse of time, or both, would constitute an Event of Default.

"Delivery Date" means, as to any Rail Car, the date of the Equipment Schedule which includes such Rail Car, being the date on which such Rail Car is sold to Lessor by Helm and leased to Lessee pursuant hereto.

"Discount Rate" means 75 basis points plus the yield to maturity as of the date of determination of actively traded United States Treasury obligations with a constant maturity (as compiled by and published in the most recent issue of the United States Federal Reserve Bulletin or its

successor publication) most nearly equal to the remaining term of the Lease (if there is no corresponding maturity, an interpolation of the two maturities which are closest to such maturity on either side).

"Equipment Schedules" has the meaning specified in Section 1 hereof.

"Event of Default" has the meaning specified in Section 17.1 hereof.

"Fair Market Rental Value" shall have the meaning specified in Section 20.3(i) hereof.

"Fair Market Sales Value" shall have the meaning specified in Section 20.3(ii) hereof.

"Fair Market Value" means Fair Market Rental Value or Fair Market Sales Value, or both, as the case may be.

"Final Determination" means a decision, judgment, decree, or other order by any court or administrative tribunal of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., when all allowable appeals have been exhausted by each party to the action), or any other settlement agreement entered into in connection with an administrative or judicial proceeding.

"Helm" means Helm Financial Corporation, a California corporation.

"Interim Term" means, for any Rail Car, the period commencing on the Delivery Date of such Rail Car and ending on May 15, 1991.

"Lease" and the terms "hereof," "herein," "hereto" and "hereunder," when used in this Purchase and Lease Agreement, shall mean and include this Purchase and Lease Agreement and each Equipment Schedule, executed from time to time, as any of the same may from time to time be amended, modified or supplemented.

"Lease Supplement" shall have the meaning set forth in Section 5.2(ii).

"Lease Term" means, collectively, the Interim Term, the Basic Term and any and all Renewal Terms.

"Liens" means liens, mortgages, encumbrances, pledges, charges and security interests or rights of any kind.

"Lessor" shall mean THE CIT GROUP/EQUIPMENT FINANCING, INC. and for purposes of Sections 9 and 16 hereof

(i) any affiliated group within the meaning of Section 1504 of the Code, of which Lessor is, or may become, a member if consolidated returns are filed for such affiliated group for Federal income tax purposes; and (ii) for any taxable year in which Lessor joins in filing a combined or consolidated State income tax return, any entity which joins in filing such return.

"Lessor's Lien" shall mean any Lien which results from claims against Lessor, unrelated to ownership of the Rail Cars or the lease thereof hereunder.

"Net Economic Return" means the Lessor's after-tax return on assets with respect to its investment in the Rail Cars, or any particular Rail Car, determined on the basis of the assumptions (including the tax assumptions) and the methods of calculation used by Lessor in determining the amounts of Basic Rent and Stipulated Loss Value as of the date hereof.

"Permitted Liens" shall mean (i) Lessor's interest in the Rail Cars; (ii) Liens for taxes either not yet due or being contested by Lessee in good faith and by appropriate proceedings, so long as such proceedings do not involve any material danger of the sale, forfeiture or loss of the Rail Cars; and (iii) materialmen's, mechanic's, workmen's, repairmen's or other like liens arising in the ordinary course of business and securing obligations which are not delinquent or which are being contested by Lessee in good faith and by appropriate proceedings, so long as such proceedings do not involve any material danger of the sale, forfeiture or loss of the Rail Cars.

"Purchase Price" means the aggregate price paid by Lessor to Helm for the purchase of all the Rail Cars specified in any and all Equipment Schedules executed prior to the Basic Term Commencement Date.

"Reference Rate" shall mean the rate publicly announced by Manufacturers Hanover Trust Company ("MHT") in New York City from time to time as its reference rate. The reference rate is not intended to be the lowest rate of interest charged by MHT in connection with extensions of credit to debtors.

"Renewal Rent" has the meaning specified in Section 20 of the Lease.

"Renewal Term" has the meaning specified in Section 20 of the Lease.

"Restorer" means Corbin Railway Service Company, a Kentucky corporation.

"Stipulated Loss Value" has the meaning specified in Section 8.3 of the Lease.

SECTION 3. NET LEASE

This Lease is a net lease. Except as expressly provided otherwise by this Lease, each of Lessee's obligations to pay all rentals and other amounts hereunder shall be absolute and unconditional, without notice or demand and Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Rail Cars from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Rail Cars, the prohibition of or other restriction against Lessee's use of all or any of the Rail Cars, the interference with such use by any person (including any governmental authority), the invalidity or unenforceability or lack of due authorization of this Lease, any defect in the title to, condition, design, fitness for use, operation, damage or destruction of, all or any of the Rail Cars, any insolvency of or any bankruptcy, reorganization or similar proceeding against Lessee, Lessor or any other person or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease of any of the Rail Cars except in accordance with the express terms hereof. Lessee reserves all rights it may have against Lessor or its assigns for breach of this Lease except the right of off-set. Each rental or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment (except for any excess payment made in error) from Lessor.

SECTION 4. PURCHASE, DELIVERY AND ACCEPTANCE OF RAIL CARS

On each Delivery Date, Helm shall execute and deliver to Lessor one or more Bills of Sale substantially in the form of Exhibit B to this Lease relating to the Rail Cars being acquired on such Delivery Date by Lessor. Upon delivery of each such Bill of Sale to Lessor title to the Rail Cars subject thereto shall pass to Lessor. Payment of the Purchase Price for each rail car shall be made by Lessor to Helm pursuant to the terms of a separate agreement. Upon execution of the Equipment Schedule by the Lessee which includes a specified Rail Car, each such Rail Car shall be deemed (i) to have been delivered to and accepted by Lessee for all purposes of this Lease and thereupon shall be subject to all of the terms and conditions of this Lease and (ii) to have been inspected on behalf of the Lessor.

SECTION 5. RENTALS

5.1. Basic Rent; Overdue Payments. Lessee agrees to pay to Lessor, as rental for the Rail Cars subject to this Lease, the monthly rental amounts indicated in the rent payment schedule attached hereto as Exhibit C (subject to adjustment in accordance with Section 5.2), on the 15th day of each calendar month, commencing on May 15, 1991, to and including April 15, 2006 ("Basic Rent"). Lessee agrees to pay Lessor on the Basic Term Commencement Date the amounts indicated in the rent payment schedule under the heading "Interim Rental Payment" as rent for the period from the delivery of any Rail Car to the Basic Term Commencement Date (the "Interim Rent"). Lessee agrees to pay Lessor, upon demand, and to the extent permitted by applicable law, interest on any part of any installment of Basic Rent, or any other amount owing hereunder, not paid when due for each day for which the same shall be overdue, computed on the basis of a 360-day year of twelve 30-day months at the Reference Rate plus 1%.

5.2. Adjustments to Basic Rent and Stipulated Loss Value. (i) The amounts of Basic Rent and Stipulated Loss Value set forth in Exhibits C and D to the Lease shall be adjusted (upward or downward) to reflect: (1) any Delivery Date occurring on a date other than the dates assumed by Lessor in the preparation of the rental payments, (2) actual cost of lock plates if such cost is below \$150 per unit, (3) actual cost of bolsters on Type 1 Rail Cars, (4) additional costs incurred in order to conform the Rail Cars to the criteria set forth in Rule 88 of the Association of American Railroads, which such costs shall be approved by Lessee and (5) any other factor agreed upon by the Lessor and the Lessee, so as to preserve for Lessor its Net Economic Return while minimizing the net present value to Lessee of the installments of Basic Rent payable under the Lease. It is agreed that the monthly rental amounts set forth on Schedule C shall be adjusted \$8.849 for each \$1000 worth of

adjustments calculated pursuant to clauses (2) through (5) of this Section 5.2.

(ii) Lessor shall furnish Lessee with a notice setting forth the amount of adjustments required by the foregoing clause on or prior to April 15, 1991. At the request and expense of Lessee, the accuracy of Lessor's calculation of such adjustment and the consistency of the calculation with the calculation used to determine the amounts of Basic Rent and Stipulated Loss Value, shall be verified by a mutually acceptable third party and, in order to enable such third party to verify such adjustment, Lessor shall provide such accountants (for their own confidential use and not be disclosed to Lessee or any other person) all information reasonably necessary for such verification, including any computer program used by Lessor to calculate such adjustments. Any such adjustment as verified, if so requested, shall be reflected in a Lease Supplement which shall be executed and delivered to Lessee by Lessor. Upon verification, or, if not requested, upon receipt of the Lease Supplement, the Lessee agrees to promptly execute any such Lease Supplement.

5.3. Payments on Nonbusiness Days. If any payment date referred to in Section 5.1 hereof is not a Business Day the rental payment otherwise payable on such date shall be payable on the next succeeding Business Day.

5.4. Place of Rent Payment. Each installment of Basic Rent shall be paid to Lessor at such address as Lessor may provide to Lessee in writing.

5.5. Payment in Immediately Available Funds. Lessee agrees to make each payment provided for hereunder in immediately available funds at or prior to 12:00 a.m. New York City time.

SECTION 6. TERM OF LEASE

Beginning and Termination. The term of this Lease as to each Rail Car shall begin on the Delivery Date for such Rail Car and, unless earlier terminated in accordance with this Lease, shall terminate on the date on which the final payment of Basic Rent or Renewal Rent in respect thereof is due. The obligations of the Lessee under Section 9 and Section 16 hereof shall survive the expiration of the term of this Lease.

SECTION 7. IDENTIFICATION MARKS

7.1. Identifying Marks. As soon as practicable following the Delivery Date, at Lessor's request, Lessee will attach to each Rail Car and maintain a conspicuous notice reasonably satisfactory to Lessor disclosing Lessor's ownership. The Lessee will cause each Rail Car to be kept numbered with the identifying number set forth in the Equipment Schedule which pertains to such Rail Car. The Lessee will not place or permit any such Rail Car to be placed in operation or exercise any control or dominion over the same until such number shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Rail Car unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited by the Lessee and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Lessor's interests in such Rail Cars and no additional filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Lessor in such Rail Cars. During the Lease Term, Lessee will not alter, deface, cover or remove such markings without the prior consent of Lessor.

7.2. Insignia of Lessee. The Rail Cars may be lettered with the names or initials or other insignia customarily used by Lessee or its sublessees.

SECTION 8. PAYMENT FOR CASUALTY OCCURRENCES; TERMINATION; INSURANCE

8.1. Casualty Occurrence; Payments. (i) In the event of any Casualty Occurrence with respect to any Rail Car or Rail Cars, Lessee shall promptly (and in any event within 20 days) and fully notify Lessor with respect thereto, specifying the date, cause and extent of such Casualty Occurrence. Subject to Section 8.1 (ii) hereof, on the Casualty Payment Date with respect to the Rail Car or Rail Cars which shall have suffered such Casualty Occurrence or, in the event Lessee elects to replace any Rail Cars and Lessee fails to convey title within the period set forth in Section 8.1 (ii) hereof, then on the next succeeding Stipulated Loss Value payment date following the expiration of the 180 day replacement period (or, in the event the term of this Lease has already expired, on a date within 20 days

of such delivery), Lessee shall pay to Lessor a sum equal to the Stipulated Loss Value of each such Rail Car plus all other amounts due and payable hereunder in respect of such Rail Car as of the date Stipulated Loss Value is calculated pursuant to Section 8.3. Upon the making of such payment by Lessee in respect of any Rail Car, rent for such Rail Car shall cease to accrue, the term of this Lease as to such Rail Car shall terminate and, for purposes of determining the amount of Basic Rent payable for the remainder of the Basic Term, the Purchase Price shall be reduced by the individual purchase price for each of the casualty cars. Lessor shall transfer, to Lessee, Lessor's right, title and interest in and to such Rail Car or Rail Cars, on an "AS IS - WHERE IS" basis, without recourse and without representation or warranty, express or implied, other than a representation and warranty that such Rail Car or Rail Cars is/are free and clear of any Lessor's Liens. Following any payment of Stipulated Loss Value by Lessee, Lessee shall be entitled to receive and retain for its own account all condemnation, insurance, or requisition payments in respect of such Rail Car(s). If the date upon which the making of such payment by the Lessee in respect of any Rail Car as required as aforesaid shall be after the term of this Lease has expired and the Rail Car had not been placed in storage pursuant to Section 21 hereof at the time of such Casualty Occurrence, no Basic Rent for such Rail Car shall accrue after the end of such term but the Lessee, in addition to paying the Stipulated Loss Value for such Rail Car, shall pay daily rental for such Rail Car from the end of such term to the date of such payment at the rate per day equal to the monthly rental rate of such Rail Car divided by 30. Notwithstanding anything to the contrary in this Section 8.1, Lessee's obligations with respect to Casualty Occurrences which occur while a Rail Car is in storage pursuant to Section 21 hereof shall be governed by such Section 21.

(ii) Upon the occurrence of a Casualty Occurrence, Lessee may, at its option (instead of complying with Section 8.1(i) hereof with respect to such Rail Car), elect by Notice to Lessor (in any event not later than the date upon which the Stipulated Loss Value with respect to such Rail Car would be otherwise payable pursuant to Section 8.3 hereof) to replace such Rail Car by conveying title to a replacement Rail Car (the "Replacement Rail Car") to Lessor, free and clear of all liens, encumbrances or rights of others whatsoever and having a value and utility at least equal to, and being in as good operating condition as, the Rail Car being replaced (before any damage to such Rail Car) within 180 days of said election. Prior to or at the time of any such conveyance, Lessee, at its own expense, shall promptly (a) furnish Lessor with a Bill of Sale, in form and substance satisfactory to Lessor, with respect to such Replacement Rail Car, (b) enter into a supplement hereto, in form and substance satisfactory to Lessor, subjecting such Replacement

Rail Car to this Lease, and cause such supplement, such other documents and instruments (including any Uniform Commercial Code or Interstate Commerce Commission filings) to be filed and recorded in such manner and places as shall be necessary or appropriate to confirm the title and interest of Lessor. For all purposes hereof, each such Replacement Rail Car shall be deemed part of the equipment leased hereunder, and shall be deemed a "Rail Car" as defined herein. No Casualty Occurrence covered by this Section 8.1(ii) shall result in any reduction or increase in Basic Rent, unless required under Section 9 hereof. Upon proper substitution of a Replacement Rail Car, Lessor will transfer title to the replaced Rail Car to Lessee, such title to be on an AS IS -- WHERE IS basis, without recourse or warranty, express or implied, other than the representation and warranty that such Rail Car is free and clear of Lessor's Liens.

The Lessee shall bear the risk of any Casualty Occurrence to any Rail Car from and after delivery and acceptance thereof by the Lessee hereunder until expiration of this Lease and satisfaction of Lessee's return obligations under Section 18 and Section 21 hereof and, to the extent provided in Section 21, during any storage period.

8.2. Requisition Not Constituting a Casualty Occurrence. In the event of the requisition for use of any Rail Car which does not, or does not yet, constitute a Casualty Occurrence hereunder, all of Lessee's obligations under this Lease with respect to such Rail Car (including, without limitation, the obligation to make all payments of Basic Rent) shall continue to the same extent as if such requisition had not occurred. All payments received by Lessor or Lessee from the United States Government or any other governmental entity for the use of such Rail Car during the term of this Lease (other than a use of such Rail Car constituting a Casualty Occurrence) shall be paid over to, or retained by, Lessee, so long as no Default or Event of Default shall have occurred and be continuing.

8.3. Amount of Stipulated Loss Value. The Stipulated Loss Value in case of a Casualty Occurrence in respect of each Rail Car subject to this Lease shall be in an amount which, subject to adjustment pursuant to Section 5.2 hereof, shall be set forth in the Stipulated Loss Value Payment Schedule attached hereto as Exhibit D opposite the date next succeeding the date of such Casualty Occurrence.

8.4. Insurance to Be Maintained. (i) Lessee will, at all times prior to the return of the Rail Cars to Lessor and at Lessee's own expense, cause to be carried and maintained (a) commercial general liability insurance with respect to the Rail Cars against third party bodily injury and property damage in amounts and against risks customarily insured against by Lessee and corporations of established

reputation engaged in the same or similar business of Lessee and (b) physical damage insurance in respect of the Rail Cars from the time leased hereunder, said physical damage insurance to be in amounts at least equal at all times to the Stipulated Loss Value of such Rail Cars (I) during the Interim Term, as computed on the Delivery Date for such Rail Cars, and (II) on or after the Basic Term Commencement Date, or the next succeeding rental payment date, as the case may be; provided, however, that Lessee may, in the case of physical damage insurance, self-insure such Rail Cars to the extent that such self-insurance is (a) consistent with prudent industry practice and, in any event, (b) in an amount (considered in relation to the then current value of such Rail Cars) no greater than the amount of self-insurance maintained with respect to other similar equipment, if any, then owned or leased by Lessee (considered in relation to the then current value of such similar equipment); and provided, further, that physical damage insurance may provide for such deductibles as are (I) consistent with prudent industry practice and, in any event, (II) in an amount no greater than the amount of deductibles allowed with respect to insurance maintained on other similar equipment; and provided, further, that with respect to commercial general liability insurance, Lessee may self-insure in an amount not to exceed \$10,000,000 annual aggregate (and not per occurrence) and carry such deductibles as are consistent with prudent industry practice. All policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice to Lessor, of cancellation in or expiration of coverage, (ii) name Lessor, as additional insured for liability policies or as loss-payee for physical damage, as its respective interest may appear and (iii) waive any right to claim any premiums or commission against Lessor. This insurance afforded applies separately to each Insured against whom claim is made or suit is brought except with respect to the limits of liability. Such policies shall not require contributions from other policies which may be held by Lessor. Lessee will cause its insurers to notify Lessor of any material change in coverage under any policy of insurance carried in accordance with this paragraph promptly after Lessee receives such notification. Upon Lessor's request, prior to the cancellation, expiration, cessation or replacement of any insurance hereunder, Lessee shall furnish a certificate or other evidence satisfactory to Lessor that such insurance coverage is in effect. During any period of this Lease in which Lessee's consolidated tangible net worth falls below One Billion Dollars, Lessor may require Lessee to provide commercial general liability coverage totalling up to \$12.5 million with deductibles of no more than \$5 million provided, that during any period of this Lease in which the consolidated tangible net worth of Lessee falls below \$500 million, Lessor may require Lessee to provide commercial general liability coverage totalling up to \$12.5 million with deductibles of no more than \$2.5 million.

8.5. Insurance Proceeds. Following any payment of Stipulated Loss Value by Lessee, Lessee shall be entitled to receive and retain for its own account all proceeds of insurance (including without limitation casualty payments under the American Association of Railroads rules and regulations) in respect of any Rail Cars suffering a Casualty Occurrence. All insurance proceeds received by Lessor in respect of any Rail Car not suffering a Casualty Occurrence, unless a Default or Event of Default shall have occurred and be continuing, shall be paid to Lessee to reimburse Lessee for its payment of the costs and expenses incurred by Lessee in replacing or restoring the Rail Cars suffering damage.

SECTION 9. TAX INDEMNITY

9.1. Tax Assumptions. The Lessor and Lessee agree that the transaction contemplated by this Lease is based on the following tax assumptions:

(i) The Lease will constitute a "true lease" for Federal income tax purposes, and for such purposes Lessor will be the owner and lessor of the Rail Cars and Lessee will be the lessee thereof;

(ii) For Federal income tax purposes, Lessor will be entitled to treat each Rail Car as "7-year property" within the meaning of Sections 168(c) and 168(e)(1) of the Code and will be entitled to depreciation deductions on 100% of the unadjusted basis of each Rail Car (the "MACRS Deductions") in each taxable year of the 7-year recovery period, commencing with the taxable year in which such Rail Car is delivered hereunder, using the 200% declining-balance method, switching to the straight-line method for the first taxable year for which using the straight-line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance, as provided by Section 168(b)(1) of the Code, and using the half-year convention described in Section 168(d)(4)(A) of the Code, as provided by Section 168(d)(1) of the Code;

(iii) Lessor will not be required, for Federal income tax purposes, to include any amounts in its income with respect to the transactions effected or contemplated by this Lease at any time during the Lease Term except for (a) Basic Rent as and when such Rents accrue, determined on the basis of the amount of rent allocable to each period under this Lease and any Renewal Rents payable pursuant to Section 17.1 of this Lease at the time such rents are payable, (b) amounts constituting gain recognized with respect to the receipt of Stipulated Loss Values, pursuant to this Lease, or by

reason of the sale or other disposition of the Rail Cars upon the expiration of the term of this Lease, (c) any amounts payable by Lessee to Lessor pursuant to this Lease on an After-Tax Basis to Lessor, (d) any income realized upon the expiration or earlier termination of the Lease Term that is attributable to non-severable improvements to the Rail Cars, and (e) any other amount with respect to the payment of which Lessor shall be entitled to a contemporaneous and offsetting deduction;

(iv) The state and local income tax consequences of the transactions contemplated by this lease will mirror the Federal tax consequences, except with respect to foreign tax credits;

(v) The Federal income tax rate applicable to each item of income, deduction and credit associated with this Lease is 34% (the "Federal Rate") and the weighted average effective rate of state and local taxes applicable to each such item will be 5% (after Federal benefit), so that Lessor's Federal taxable income will be subject to an over-all effective rate of 39% (the "Tax Rate");

(vi) For Federal income tax purposes, at least 80% of all income, deductions and credits arising out of the transactions contemplated by the Lease will be treated as income, deductions or credits from sources within the United States; and

(vii) Lessor's taxable year, for Federal, state and local income tax purposes, is the calendar year.

9.2. Tax Representations, Warranties and Covenants of Lessee. Lessee represents, warrants and covenants as follows:

(i) During the first seven years of this Lease, the Rail Cars (a) will not constitute "tax-exempt use property" within the meaning of Section 168(h)(1) of the Code, (b) will not be used "predominantly outside the United States" within the meaning of Section 168(g)(4) of the Code, (c) will not constitute "public utility property" within the meaning of Section 167(l)(3)(A) of the Code and (d) will not constitute "listed property" within the meaning of Section 280F(d)(4) of the Code;

(ii) Neither Lessee nor any affiliate thereof (a) will have claimed or will claim the depreciation deductions with respect to the Rail Cars or (b) will have claimed or will claim to be the owner of the Rail Cars for any tax purpose;

(iii) Upon transfer and conveyance of title of the Rail Cars to Lessor on the Delivery Date, the Rail Cars will not require any improvements, modifications or additions (other than ancillary items or removable equipment of a kind customarily selected and furnished by purchasers and lessees of similar equipment) in order to be rendered complete for its intended use by Lessee;

(iv) As of the Delivery Date, each Rail Car would constitute "seven year property" for purposes of Section 168 of the Code in the hands of Lessee if Lessee had purchased such Rail Car from Helm on or before such date, and, as such, Lessee would have been entitled to depreciation deductions on 100% of the unadjusted basis of each Rail Car in each taxable year of the 7-year recovery period, commencing with the calendar year in which the Delivery Date for such Rail Car occurred, using the 200% declining-balance method, switching to the straight-line method for the first taxable year for which using the straight-line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance, as provided by Section 168(b)(1) of the Code, and using the half-year convention described in Section 168(d)(4)(A) of the Code, as provided by Section 168(d)(1) of the Code.

9.3. Income Tax Indemnification. (i) "Lessee Act or Omission" shall mean: (a) any act (other than Lessee's execution of this Lease or any act specifically required or specifically contemplated by this Lease) or omission (other than any act specifically prohibited from being taken pursuant to this Lease) by Lessee, any affiliate of Lessee or any person (other than Lessor, any affiliate of Lessor or any person claiming through Lessor) using or in possession of any Rail Car; (b) any breach or inaccuracy of any Tax Representations, Warranties or Covenants by Lessee; (c) any payment or crediting by a manufacturer, vendor or other person (other than Lessor or any affiliate of Lessor) of a warranty, rebate, refund, credit, or price adjustment with respect to any Rail Car and (d) the alteration, repair, replacement or substitution of, or the making of any addition, modification or improvement to, any Rail Car.

(ii) If, as a result of any Lessee Act or Omission, Lessor shall, for Federal income tax purposes: (a) lose the right to claim, suffer a disallowance, be required to recapture, or recapture or fail to claim as a result of its good faith determination (based upon the opinion of independent tax counsel to the effect that there is no reasonable basis consistent with Formal Opinion 85-352 of the American Bar Association (or any successor thereto) ("Reasonable Basis") for making such a claim, such counsel ("Counsel") to be selected by Lessor and acceptable to Lessee) that such recapture or failure to claim is required,

all or any portion of the MACRS Deductions; or (b) be required to include any amount in its income or include in income any amount other than in the amount and at the time contemplated by the Tax Assumptions, as a result of its good faith determination (based upon the opinion of Counsel to the effect that there is no Reasonable Basis for not including such amount in income) that such inclusion in income is required (any such disallowance, recapture, failure to claim or inclusion being referred to hereafter as a "Loss"), then, except as provided in Section 9.5 hereof, Lessee will indemnify Lessor for the Federal, state and local income tax consequences of such Loss.

(iii) (a) The amount of the indemnity payable to Lessor by Lessee as a result of a Loss shall be that lump-sum amount which would, on an After-Tax Basis and independent of Lessor's actual tax position, preserve its Net Economic Return, taking into account all increased Federal, state and local taxes payable by Lessor in all taxable years by reason of the circumstances or adjustments giving rise to such Loss and any Federal, state and local tax benefits available to Lessor in subsequent taxable years by reason of the circumstances or adjustment giving rise to such Loss that would not have been realized by Lessor if such Loss had not occurred. For purposes of computing the before-tax amount payable as an indemnity pursuant to this Section 9.3(iii)(a), it shall be assumed that the Tax Rate is the applicable blended Federal, state and local income tax rate, that the state and local income tax consequences mirror the Federal income tax consequences of the Loss, that the Lessor can currently fully utilize any tax benefit that is the subject of any Loss against income taxable at the Tax Rate and that Lessor is taxable currently at the Tax Rate on any income inclusion that is the subject of any Loss.

(b) Unless an Event of Default shall have occurred and be continuing, Lessee may elect to pay, in lieu of the lump sum amount computed pursuant to Section 9.3(iii)(a), additional rent paid in installments on each date on which Basic Rent is payable, in an amount sufficient on an After-Tax Basis to amortize such lump sum amount in level installments of principal, plus interest on the unpaid balance thereof at a floating rate per annum equal to the Reference Rate, except that if an Event of Default relating to payment shall occur and be continuing, Lessee shall pay Lessor the entire unamortized balance of such lump sum amount, which amount shall become due and payable 20 days after the Lessee receives written demand therefor.

(iv) (a) Except as provided in Sections 9.5 and 9.6 hereof, if as a result of any Lessee Act or Omission Lessor shall lose the right to claim currently, or shall not claim currently as a result of its good faith determination (based upon the opinion of Counsel that there is no Reasonable Basis

for making such a claim) that such claim is not properly allowable, any foreign tax credits as a result of the location or operation of the Rail Cars over 20% of the time outside of the United States for a given taxable year (any such loss or failure to claim being hereinafter referred to as a "Loss of Foreign Tax Credits"), then Lessee shall pay to Lessor as an indemnity such amount which, on an After-Tax Basis, shall equal the amount of the additional Federal income taxes that Lessor is required to pay as a result of the Loss of Foreign Tax Credits. In calculating the before-tax amount payable under this subsection it shall be assumed that the Federal Rate is the applicable Federal income tax rate. The amount of any foreign tax credits which Lessor may lose in any year as a result of the use of any Rail Car outside the United States over 20% of the time shall be computed by assuming that all foreign tax credits available to Lessor with respect to transactions unrelated to the ownership and leasing of the Rail Cars would have been fully utilized in the year that the Rail Cars are used outside the United States over 20% of the time but for such foreign use and that any creditable foreign taxes which result from such foreign use are to be utilized after the application of all other credits available to Lessor; provided, however, that if Lessor realized a Loss of Foreign Tax Credits with respect to a taxable year in which Lessor recognizes, with respect to any transaction other than this Lease, a Loss of Foreign Tax Credits and is entitled to indemnification from a participant in such other transaction for increased U.S. taxes resulting from the inability to utilize foreign taxes on a credit against U.S. tax by operation of Section 904 of the Code ("Unrelated Indemnified Transaction"), then the amount of foreign tax credits which Lessor is prevented from utilizing for such year by reason of the operation of Section 904 shall be allocated among this transaction, Unrelated Indemnified Transactions, and other transactions engaged in by Lessor in the following order of priority:

(I) First to Unrelated Indemnified Transactions in which Lessor is indemnified without regard to unrelated transactions and in which Lessor is entitled to indemnification with respect to such tax year;

(II) Second, among this transaction and any Unrelated Indemnified Transactions on a pro rata basis, based on the relative amounts of Loss of Foreign Tax Credits recognized with respect to each transaction;

(III) Third, to all other transactions engaged in by Lessor for which it is not indemnified.

(b)(I) If by reason of (A) a foreign tax credit carryover or carryback arising from the nonutilization of foreign tax credits that gave rise to a Loss of Foreign Tax Credits with respect to which an indemnity has been paid

pursuant to the preceding paragraph 9.3(iv)(a) or (B) the recognition of Foreign Source Transaction Income, as defined in Section 9.3(iv)(c), in any taxable year of Lessor that is not a Loss Year, the foreign tax credits that Lessor is entitled to utilize for any tax year shall exceed the foreign tax credits to which Lessor would have been entitled in the absence of Lessor's participation in this Lease, then Lessor shall pay to Lessee the amount of the reduction in Federal income taxes attributable to the amount of such excess (calculated by assuming that Lessor's taxable income for Federal income tax purposes is taxable at the Federal Rate) (the "Foreign Tax Credit Savings") plus any additional Federal tax benefits actually realized by Lessor as a result of such payment. For purposes of determining under the preceding sentence whether a foreign tax credit is attributable to the participation in this Lease, Foreign Tax Credits utilized in any taxable year that is not a Loss Year shall be deemed to be allocated among this Lease, Unrelated Indemnified Transactions and other transactions engaged in by Lessor in the following order of priority:

(X) First, to transactions engaged in by Lessor other than this Transaction and Unrelated Indemnified Transactions, but only to the extent that such foreign tax credits would have been available for use by Lessor in such taxable year if Lessor had not participated in this Transaction and Unrelated Indemnified Transactions; and

(Y) Second, to this Lease and the Unrelated Indemnified Transactions described in paragraph 9.3(iv)(a)(I) and (II) which call for payment to Lessee of Lessor's Foreign Tax Credit Savings, on a pro rata basis, based on the relative amounts of Foreign Source Income as defined in Section 9.3(iv)(c) recognized with respect to each such transaction, but only to the extent that the foreign tax credits available for use by Lessor in such taxable year are greater than the foreign tax credits that would have been available for use by Lessor in such taxable year if Lessor had not participated in such transactions.

(II) The aggregate amount paid by Lessor pursuant to this paragraph 9.3(iv)(b) as Foreign Tax Credit Savings shall not exceed the Indemnity Payment paid by Lessee to Lessor pursuant to the preceding paragraph 9.3(iii). In the event Lessee has made a payment to Lessor pursuant to the preceding paragraph 9.3(iii), within 30 days following the due date of Lessor's Federal income tax return (taking into account any extensions) with respect to any taxable year that is not a Loss Year, Lessor shall provide Lessee with a certificate that is signed by an officer of Lessor setting forth whether any amount is required to be paid by Lessor to Lessee pursuant to this paragraph 9.3(iv), and if an amount

is required to be paid, the certificate shall include the computation of such amount. Any payments to be made to Lessee pursuant to this Section 9.3(iv) shall be made at the time described in Section 9.3(v) hereof. The computations included in such certificate shall be subject to Section 9.6 hereof.

(c) For purposes of this Section 9.3(iv):

"Foreign Source Transaction Income" shall mean the portion of the income contemplated by this Lease that is treated as derived from sources outside the United States by reason of the location or operation of the Rail Cars outside the United States over 20% of the time.

"Loss Year" shall mean any taxable year of the Lessor ending on or before December 31, 1997.

"Foreign Source Income" shall mean, with respect to any transaction of Lessor, the excess of gross income from any such transaction that is treated for U.S. tax purposes as from sources outside the United States over the deductions that are attributable to such gross income.

(v) Subject to the provisions of Sections 9.5 and 9.6 hereof, Lessee shall pay (or, in the case of an indemnity payable as additional rent pursuant to Section 9.3(iii)(b), shall commence paying) any indemnity due pursuant to this Section 9.3 within 30 days after notification by Lessor to Lessee of the occurrence of a Loss or Loss of Foreign Tax Credits.

(vi) Any amount paid under this Section 9.3 shall, if subsequent circumstances require, be thereafter adjusted (or further appropriate adjustments shall be made in respect thereof, including any adjustments necessary to reflect the amount of any refund of taxes, interest or penalties received by Lessor, or the receipt by Lessor of interest with respect to such refund) when and to the extent necessary so that, on an After-Tax Basis, the Net Economic Return of Lessor which would have been expected to be realized independent of Lessor's actual tax position (assuming that the applicable Federal income tax rate is the Tax Rate) is preserved. To the extent possible, all adjustments made pursuant to the immediately preceding sentence shall be made as a credit or debit to any amount to be paid on the next succeeding Basic Rent Payment Date; provided, however, that no such debit shall be made unless Lessee has previously made all payments required to be made by Lessee pursuant to this Section 9.3.

(vii) Lessee shall also pay Lessor upon demand an amount which, on an After-Tax Basis, shall be equal to the

amount of any interest (net of the decrease in taxes caused by the deduction of such interest from taxable income), penalties or additions to tax (excluding any penalties attributable to acts of Lessor unrelated to this transaction), assessed against Lessor under Federal income tax laws in connection with a Loss or Loss of Foreign Tax Credits. All demands for amounts payable to Lessor hereunder shall be accompanied by a written statement describing in reasonable detail the related Loss or Loss of Foreign Tax Credits and the amounts so payable.

9.4. Exceptions to Indemnification. Lessee shall not be obligated to make any payment to Lessor pursuant to this Lease with respect to a Loss or Loss of Foreign Tax Credits in the event and to the extent that such Loss or Loss of Foreign Tax Credits results from one or more of the following:

(i) a voluntary sale or other disposition by Lessor of all or any part of its interest in any Rail Car or this Lease unless resulting from an Event of Default which has occurred and is still continuing;

(ii) an involuntary disposition by Lessor of all or any part of its interest in any Rail Car due solely to transactions or circumstances unrelated to the transactions effected or contemplated by this Lease;

(iii) failure (other than on advice of Counsel that there is no Reasonable Basis for such claim, inclusion or treatment) by Lessor timely and properly to claim on any tax return the MACRS Deductions, to include amounts in income as and when contemplated by the Tax Assumptions, or to treat at least 80% of the income or deductions as derived from or allocable to sources within the United States;

(iv) failure by Lessor to have sufficient income subject to tax to enjoy the benefits contemplated by the Tax Assumptions;

(v) failure by Lessor to file its tax returns on the basis of the accrual method of accounting;

(vi) an event as a result of which Lessee is required pursuant to this Lease to pay and has paid in full the Stipulated Loss Value if and as required by Sections 8.1 and 15.1 of this Lease;

(vii) with respect to any Rail Car, any change in income tax laws or regulations or published administrative or judicial interpretations thereof, which is enacted or promulgated, as the case may be,

after the delivery and acceptance of such Rail Car under this Lease;

(viii) the taxable year of Lessor being other than a calendar year or any taxable year consisting of a period of less than 12 months;

(ix) the failure of the transactions effected by this Lease to be treated as a "true lease" for Federal purposes solely by virtue of the existence or exercise of Lessee's option to purchase the Rail Cars under Section 20 of this Lease, or for any other reason other than a breach of any of Lessee's representations, warranties or covenants in this Lease;

(x) the application of the provisions of Section 467 of the Code or regulations thereunder to this Lease;

(xi) the application of Section 168(d)(3) of the Code;

(xii) the breach of Lessor's obligations relating to Lessee's contest rights described in Section 9.5; or

(xiii) the imposition on Lessor of the alternative minimum tax set forth in Section 55 of the Code or the environmental tax set forth in Section 59A of the Code.

9.5. Contest Provisions. (i) Lessor shall promptly notify Lessee if the Internal Revenue Service, in either a 30-day letter or a notice of deficiency (as described in Section 6212 of the Code), shall propose an adjustment to the Federal income taxes of Lessor, if Lessee would be required to indemnify Lessor pursuant to this Agreement. If requested by Lessee in a timely written request, Lessor shall request an opinion of Counsel which states that there is a Reasonable Basis for determination that the tax treatment of the item to be adjusted which is consistent with the Tax Assumptions would, if challenged by the Internal Revenue Service, be upheld in litigation. If the opinion is to that effect and if Lessee promptly requests Lessor to do so, Lessor shall contest the proposed adjustment, shall consider in good faith any suggestion made by Lessee as to the method of pursuing such contest, shall not discriminate against any proposed adjustment which is indemnified by Lessee as compared with other proposed adjustments involving potential tax liability of Lessor, and shall not, in any contest properly initiated pursuant to this Section 9.5, settle such proposed adjustment; provided, however, that Lessor shall not be obligated to contest such adjustment unless (a) the amount of the indemnity which Lessee would be required to pay would exceed \$50,000, such amount to be calculated by taking into account all indemnity payments which Lessee would be required to pay to Lessor if

the contest is adversely determined; (b) Lessee acknowledges its liability under this Section 9 in the event that the Internal Revenue Service prevails in its position regarding the adjustment; (c) if an Event of Default described in Section 17.1 of the Lease has occurred and is continuing, Lessee provides Lessor with security in a manner reasonably satisfactory to Lessor, including an amount sufficient to cover the expenses of the contest; and (d) Lessee has paid to Lessor all amounts then due to Lessor under the terms of this Lease; provided, further, that Lessor shall determine in its sole discretion the nature of all action to be taken to contest such proposed adjustment, including (I) whether by way of judicial or administrative proceeding, or both, (II) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (III) if Lessor shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. Lessor shall have full control over any contest arising with respect to the Federal return of Lessor pursuant to this Section 9 and shall not be obligated to appeal an adverse determination by any appellate court. At any time, whether before or after commencing to take the action set forth in this Section 9.5, Lessor may decline to take any such action with respect to all or any portion of a proposed adjustment by notifying Lessee in writing that Lessee is relieved of its obligation to indemnify Lessor with respect to the adjustment or such portion, as the case may be.

(ii) Lessor shall not be required to take any action pursuant to this Section 9.5 unless and until Lessee shall have agreed to indemnify Lessor in a manner reasonably satisfactory to Lessor for any fees, expenses, statutory or regulatory penalties, interest, additions to tax, or other similar liabilities or losses which Lessor may incur as a result of contesting the validity of any proposed adjustment (but not with respect to transactions unrelated to this Lease) and shall have agreed to pay to Lessor on demand all costs and expenses which lessor may incur in connection with contesting such proposed adjustment (including fees and disbursements of counsel and any fees and disbursements of Counsel attributable to the rendering of any opinion described in Section 9.5(i)). If Lessor determines to contest any adjustment by paying the additional tax and suing for a refund, Lessee shall lend to Lessor on an interest-free basis an amount equal to the sum of any tax, interest, penalties and additions to tax which are required to be paid.

Upon receipt by Lessor of a refund of any amounts paid by it based on any adjustment in respect of which amounts it shall have been paid or advanced an equivalent amount by Lessee (whether or not pursuant to a contest), Lessor shall pay to Lessee the amount of such refund (which, in the case of any contest in which a loan has been advanced

pursuant to this paragraph, shall be deemed to be in repayment of the loan advanced by Lessee to the extent fairly attributable thereto), together with any interest received by it on such refund plus any net additional Federal tax benefits realized by Lessor as the result of such receipt and payment; and upon disallowance of any such refund, Lessee shall forgive the amount of the loan fairly attributable thereto and shall pay to Lessor the amount of its indemnity obligation hereunder (including such amount as, after deduction of any Federal income tax required to be paid by Lessor in respect of the receipt of such amount, shall be equal to the sum, on an After-Tax Basis, of any tax, interest, penalties or additions to tax payable with respect to the forgiveness of such loan), after taking into account the forgiveness of such loan.

(iii) If any adjustment referred to in this Section 9.5 shall be proposed and Lessee shall have requested Lessor to contest such adjustment as above provided and shall have duly complied with the terms of this Section 9.5, then Lessee's liability with respect to such adjustment shall become fixed upon final determination of such adjustment, but in all other cases the liability of Lessee shall become fixed and determinable at the time specified in Section 9.3, provided, however, that if the opinion of Counsel requested pursuant to paragraph (i) of this Section 9.5 is to the effect that there is no reasonable basis that the tax treatment of an item which is consistent with the Tax Assumptions would, if challenged by the Internal Revenue Service, as the case may be, be upheld in litigation, then the liability of Lessee shall become fixed no earlier than the date 30 days after receipt of such opinion by Lessee.

9.6. General. In the event of any adjustments or claims for indemnity or payment of Foreign Tax Credit Savings under this Section 9, such amount shall be computed by Lessor in the first instance, and each party shall be provided with such information (including, but not limited to any such separate purchase agreements between Lessor and Helm setting forth the Purchase Price of the Rail Cars) by the other as shall be reasonably required in order that it may reasonably satisfy itself as to the requested amount of such indemnification; provided, however, that Lessor shall not be obligated to make available any papers, documents or other information relating to its Federal, state or local income tax returns or any issues relating thereto nor any computer program employed to calculate any such amount. Upon request of Lessee made within a reasonable time following any such claim, such amounts shall be verified by Lessor's nationally-recognized independent public accountants. In order to facilitate such verification, Lessor shall make available to such accountants all information reasonably necessary for such verification, including any computer program used by Lessor to calculate any such amounts. Such information shall

be for the confidential use of such accountants and shall not be disclosed to Lessee or any other person. The costs of such verification shall be borne by Lessee, unless such verification shall result in an adjustment in Lessee's favor amounting to 10% or more of the amount computed by Lessor, in which case such verification shall be at the expense of Lessor.

9.7. Taxes. Lessee agrees to pay all taxes, assessments and other governmental charges or fees (not including any tax (other than (i) any tax in the nature of a sales, use, rental or value-added tax, and (ii) a tax imposed by any foreign jurisdiction to which Lessor would not be subject, or which would have been less in amount, but for Lessor's participation in the transactions contemplated by this Lease) based on or measured in whole or part by gross or net income, gross or net receipts, profits, capital or net worth of Lessor or any fines, penalties, or interest resulting from Lessor's gross negligence or gross failure to use reasonable care to minimize any taxes, assessments or other governmental charges or fees), by whatever taxing authority imposed and whether payable by Lessor or Lessee, on or relating to the Rail Cars or the purchase, use, registration, ownership or operation thereof and on or relating to this Lease or the transactions contemplated hereby or the Equipment Schedule executed in connection herewith or the rent payable hereunder ("Taxes"). Whenever allowable under State or local law, Lessee agrees to file all required returns, furnish copies upon request to Lessor, and pay such Taxes. However, if under local law or custom such payments may be made only by Lessor, and Lessee is notified such payments are due, Lessee will advise Lessor in writing in sufficient time for Lessor to make a timely filing of the required returns and Lessor agrees to promptly file all such returns, including personal property tax returns, and to pay all such Taxes when due. Lessee agrees, when necessary, to assist in the preparation of such returns. Lessee shall reimburse Lessor for all payments of such Taxes upon Lessor's presentation to Lessee of evidence of payment reasonably satisfactory to Lessee, determining the amount of such Tax. Lessee reserves the right to seek payment from Lessor of any penalties or interest paid by Lessee as a result of Lessor's failure to pay said Taxes due to Lessor's gross negligence or gross failure to use reasonable care to minimize any taxes, assessments or other governmental charges or fees.

If Lessor receives a written notice from any taxing authority asserting liability for any Taxes or proposing an increase in the liability for any Taxes (such assertion or such proposed increase in Taxes being hereinafter called a "Claim"), indemnification for which would be required under this Section 9.7, Lessor will notify Lessee in writing within a reasonable time of such Claim. If Lessee delivers to Lessor written notice of its desire to contest such Claim

within 30 days after receipt of notice from Lessor, such Claim will be contested in accordance with this paragraph, provided, however, that no such contest shall be required if (a) it would involve any danger of the sale, forfeiture or loss of the Rail Cars or any interest therein, (b) Lessee has not agreed to indemnify Lessor in a manner reasonably satisfactory to Lessor for any liability, expense or loss arising out of or relating to such contest, (c) an Event of Default has occurred and is continuing, (d) Lessee fails to acknowledge its liability under this Section 9.7 in the event such contest is unsuccessful, or (e) Lessee fails to provide an opinion of its counsel (or if Counsel disagrees with such opinion, of independent counsel reasonably acceptable to Lessor) to the effect that there is a Reasonable Basis for such contest. If in any such contest the decision is made to pay the taxes and sue for a refund, Lessee will advance to Lessor on an interest-free basis sufficient funds to pay the taxes which are to be contested, and will agree to indemnify Lessor for any adverse tax consequences resulting from such advance. To the extent such Claim affects Lessor and arises with respect to a tax return of Lessee, Lessee shall have the exclusive right to conduct the contest and Lessor shall cooperate with Lessee so as to effect the contest rights of Lessee, and the contest and all preparation therefor shall be the sole responsibility of Lessee and shall be conducted entirely at Lessee's expense. To the extent such Claim affects and arises with respect to a tax return of Lessor, Lessor shall, following receipt from Lessee of such notice, at the expense of Lessee (including, without limitation, all costs, expenses, losses, legal and accountants' fees and disbursements, penalties and interest), in good faith contest, by legal action if requested by Lessee (or in Lessor's discretion shall permit Lessee to contest, if desired by Lessee) such Claim. Lessor will cooperate with any reasonable request made by Lessee in connection therewith. Within thirty days after a Final Determination (a) Lessee shall pay on an After-Tax Basis to Lessor the full amount, if any, due to Lessor pursuant to the provisions of this Section 9.7 for the taxable years subject to said Final Determination, and (b) Lessor shall repay to Lessee the amount of funds advanced to Lessor (together with any interest received by Lessor that is attributable to any relevant refund), adjusted to reflect any net after-tax effect to Lessor (i.e., reduced by (i) the amount of all taxes required to be paid by Lessor in respect of the receipt or accrual of any relevant refund and the receipt or accrual of any interest thereon, and increased by (ii) the amount of any reduced taxes realized by Lessor as a result of such payment to Lessee). The payments made pursuant to the foregoing clauses (a) and (b) shall be offset against each other. Any payments due under the provisions of this Section 9.7, with respect to taxable years different from those which were subject to said Final Determination, shall be still subject to the contest rights. At any time, whether before

or after commencing to take the action set forth in this paragraph, Lessor may decline to take any such action with respect to all or any portion of a Claim by notifying Lessee in writing that Lessee is relieved of its obligation to indemnify Lessor with respect to the adjustment or such portion, as the case may be.

9.8. Records and Statements. Within 30 days after written request therefor, Lessee shall provide such non-confidential information (not including any tax return, financial statement or similar document) as Lessor shall request, to the extent that such information is reasonably available to Lessee or any affiliated person and reasonably needed by Lessor to fulfill its tax return filing, audit and litigation obligations arising out of the transactions contemplated by this Lease.

SECTION 10. REPORTS

On or before February 15 in each year, commencing with 1992, the Lessee will furnish to the Lessor an accurate statement (a) setting forth as at the preceding February 15 the amount, description and numbers of all Rail Cars then leased hereunder, the amount, description and numbers of all Rail Cars that have suffered a Casualty Occurrence during the preceding calendar year (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Rail Cars as the Lessor may reasonably request, (b) stating that, in the case of all Rail Cars repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 7 hereof have been preserved or replaced and (c) providing such data with respect to the use of the Rail Cars and any other information that is reasonably required in order to determine the amount of any income, gain or loss attributable to this Lease. The Lessor shall, at its sole cost and expense, have the right by its agents to inspect the Rail Cars and the Lessee's records with respect thereto at such reasonable times as the Lessor may request as may be reasonably necessary to confirm to the Lessor the existence of proper maintenance of the Rail Cars during the continuance of this Lease.

SECTION 11. DISCLAIMER OF WARRANTIES; WARRANTY OF TITLE

LESSOR NEITHER MAKES NOR HAS MADE, NOR SHALL BE DEEMED TO MAKE OR HAVE MADE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH

SPECIFICATIONS OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE RAIL CARS OR ANY COMPONENT THEREOF DELIVERED TO LESSEE HEREUNDER INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE RAIL CARS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE RAIL CARS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO ANY RAIL CAR OR ANY COMPONENT THEREOF, EITHER UPON DELIVERY THEREOF TO LESSEE OR OTHERWISE, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee. Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of Lessor and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have against Helm or the Restorer of each Rail Car; provided, however, that if at any time an Event of Default shall have occurred and be continuing or upon return of the Rail Cars to Lessor, the foregoing rights shall revert to Lessor. LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO LESSEE OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE FOLLOWING: (i) ANY LIABILITY, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY ANY RAIL CARS OR BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN OR BY ANY OTHER CIRCUMSTANCES IN CONNECTION THEREWITH; (ii) THE USE, OPERATION OR PERFORMANCE OF ANY RAIL CARS OR ANY RISKS RELATING THERETO; (iii) ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS OR CONSEQUENTIAL DAMAGES; OR (iv) THE DELIVERY, OPERATION, SERVICING, MAINTENANCE, REPAIR, IMPROVEMENT OR REPLACEMENT OF ANY RAIL CARS. LESSEE'S EXECUTION AND DELIVERY OF THE EQUIPMENT SCHEDULE PERTAINING TO ANY RAIL CAR SHALL BE CONCLUSIVE EVIDENCE AS BETWEEN LESSEE AND LESSOR THAT SUCH RAIL CAR IS IN ALL THE FOREGOING RESPECTS SATISFACTORY TO LESSEE, AND LESSEE WILL NOT ASSERT ANY CLAIM OF ANY NATURE WHATSOEVER AGAINST LESSOR BASED ON ANY OF THE FOREGOING MATTERS.

Lessor warrants that, upon its leasing of the Rail Cars to Lessee pursuant to this Lease, title to the Rail Cars shall be of the same quality as was conveyed to Lessor by Helm except for the rights of Lessee pursuant to this Lease. Lessor covenants that, during the term of this Lease, or during any renewal term thereof, Lessor shall not create or suffer or permit any Lessor's Liens on the Rail Cars and, should any such Lessor's Lien arise during the Lease Term, Lessor shall promptly discharge all such Lessor's Liens, but this provision shall not require the payment of any debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings; provided that such contest will not materially endanger the rights or interests of Lessee. Lessor shall promptly pay any valid final judgment

enforcing any such Lien and cause the same to be satisfied of record unless the same shall have been appropriately bonded.

SECTION 12. REPRESENTATIONS, WARRANTIES
AND COVENANTS OF THE LESSEE
AND HELM

12.1. Representations and Warranties. (a) Lessee represents and warrants as of the date hereof that:

(i) Lessee is a corporation duly incorporated, validly existing, and in good standing under the laws of its jurisdiction of incorporation, is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the conduct of its business requires such qualification, and has the corporate power and authority to conduct its business as such business is presently being conducted, and to enter into and perform its obligations hereunder.

(ii) Lessee is not in default, and no event or condition exists which after the giving of notice or lapse of time or both would constitute an event of default, under any mortgage, indenture, contract, agreement, judgment or other undertaking to which Lessee is a party or which purports to be binding upon Lessee or upon any of its assets, except for any such default, event or condition which, individually or in the aggregate, would not affect Lessee's ability to perform its obligations under this Lease or any such mortgage, indenture, contract, agreement, judgment or other undertaking.

(iii) The execution, delivery and performance by Lessee of its obligations under this Lease do not require its stockholders' approval or the consent of any trustee or holder of any indebtedness or obligation of Lessee nor the consent or approval of, or the registration with, or the taking of any other action in respect of, and will not result in the violation of, any Federal, State or local law, or any law, rule or regulation presently in effect of any Federal, State or other governmental authority or agency, except for the filing of this Lease for recordation with the Interstate Commerce Commission.

(iv) There are no actions, suits or proceedings pending or threatened before any court, administrative agency, arbitrator or governmental body which will, if determined adversely to Lessee, materially adversely affect the business, assets, operations or condition (financial or otherwise) of Lessee, or impair Lessee's ability to perform its obligations under this Lease.

(v) Lessee has heretofore caused to be delivered to Lessor copies of the balance sheets, statements or earnings and retained earnings statements of Lessee and its consolidated subsidiaries (i) for the fiscal years ended May 31, 1990 and 1989 as certified by Peat, Marwick, Main & Co. and (ii) for the quarterly periods ending August 31, 1990 and November 30, 1990 (as soon as the latter becomes available). Such balance sheets and statements of earnings and retained earnings statements (including in each case the related schedules and notes) fairly present the consolidated subsidiaries as of the respective dates of said balance sheets and the consolidated results of the operations of Lessee and its consolidated subsidiaries for the respective periods ended on such dates and have been prepared in accordance with generally accepted accounting principles consistently applied (except as set forth therein). Since August 31, 1990, there have been no material adverse changes in the assets, liabilities, or business of Lessee or its consolidated subsidiaries taken as a whole and there has been no occurrence which would materially impair Lessee's ability to perform its obligations under this Lease.

(vi) The filing and recordation of this Lease with the Interstate Commerce Commission is the only action necessary to perfect and protect the interest of Lessor in and to the Rail Cars.

(vii) This Lease and each Equipment Schedule delivered on the date hereof have been duly authorized, executed and delivered by Lessee and constitute valid and legally binding instruments of Lessee enforceable in accordance with their respective terms.

(viii) The chief executive office of Lessee is located in Minnetonka, Minnesota.

(b) Helm represents and warrants as of the date hereof that:

(i) Helm is a corporation duly incorporated, validly existing, and in good standing under the laws of its jurisdiction of incorporation, is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the conduct of its business requires such qualification, and has the corporate power and authority to conduct its business as such business is presently being conducted, and to enter into and perform its obligations hereunder.

(ii) The execution, delivery and performance by Helm of its obligations under this Lease do not require its stockholders' approval or the consent of any trustee

or holder of any indebtedness or obligation of Lessee nor the consent or approval of, or the registration with, or the taking of any other action in respect of, and will not result in the violation of, any Federal, State or local law, or any law, rule or regulation presently in effect of any Federal, State or other governmental authority or agency, except for the filing of this Lease for recordation with the Interstate Commerce Commission.

(iii) On each Delivery Date, Helm will convey to Lessor good and marketable title to each Rail Car then being purchased by Lessor, free and clear of any Liens other than Lessor's Liens and other than such Liens as are created by this Lease.

(iv) Each Bill of Sale will effectively convey to Lessor the rights and claims purported to be conveyed pursuant thereto, free and clear of all Liens, other than Lessor's Liens and such Liens as are created by this Lease.

(v) This Lease and each Bill of Sale delivered on the date hereof have been duly authorized, executed and delivered by Helm and constitute valid and legally binding instruments of Helm enforceable in accordance with their respective terms.

(vi) The initial basis of each Rail Car (within the meaning of Section 167(g) of the Code) to Lessor will be the purchase price of such Rail Car as set forth in a separate agreement between Helm and the Lessor.

(vii) The purchase price paid for each Rail Car represents the fair market value of such Rail Car.

(viii) The information of a factual nature supplied by Helm or any affiliate to any appraiser engaged by or on behalf of Lessor with respect to the Rail Cars and their intended use was complete and accurate to the best of the knowledge of Helm and any such affiliate.

(ix) Lessor shall not fail in 1990 to become the owner for Federal income tax purposes of the Rail Cars sold to Lessor by Helm and leased to Lessee pursuant hereto on December 31, 1990 other than for reasons of Lessors own actions or inactions, and this representation and warranty shall survive the termination or expiration of this Lease.

12.2. Covenants. (a) Lessee covenants that: (i) Lessee will notify Lessor in advance of any change in the location of its chief executive office.

(ii) Lessee shall maintain a system of accounting in accordance with generally accepted accounting principles consistently applied. Lessee shall deliver to Lessor:

(1) as soon as practicable and in any event within 60 days after the end of each quarterly period in each fiscal year, a consolidated profit and loss statement and reconciliation of surplus statement of Lessee and its subsidiaries for the periods from the beginning of the current fiscal year to the end of such quarterly period and from the beginning to such quarterly period to the end of such quarterly period, and a consolidated balance sheet of Lessee and its subsidiaries, as at the end of such quarterly period, setting forth in each case in comparative form corresponding consolidated figures from the corresponding period in the immediately preceding fiscal year, all in reasonable detail and certified by an authorized financial officer of Lessee, subject to changes resulting from year-end adjustments; and

(2) as soon as practicable and in any event within 120 days after the end of each fiscal year, a consolidated profit and loss statement, reconciliation of surplus statement and consolidated statement of cash flows of Lessee and its subsidiaries for such year, and a consolidated balance sheet of Lessee and its subsidiaries as at the end of such year, setting forth in each case in comparative form corresponding consolidated figures from the preceding annual audit, all in reasonable detail and certified to Lessee by independent certified public accountants of recognized standing selected by Lessee.

(iii) Each Equipment Schedule delivered after the date hereof shall have been duly authorized, executed and delivered by Lessee and shall constitute a valid and legally binding obligation of Lessee enforceable in accordance with its terms.

(b) Helm covenants that:

(i) Each Bill of Sale delivered after the date hereof shall have been duly authorized, executed and delivered by Helm and shall constitute the valid and legally binding obligation of Helm enforceable in accordance with its terms.

**SECTION 13. REPRESENTATIONS AND
WARRANTIES OF LESSOR**

Lessor represents and warrants that:

(i) Lessor is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, is in good standing as a foreign corporation in each jurisdiction in which such qualification or licensing is required and the failure to be so qualified or licensed would have a material adverse effect on its business, assets, operations or condition (financial or otherwise) or its ability to perform its obligations hereunder, and has the power and authority to conduct its business as such business is presently being conducted, to own its properties and to enter into and perform its obligations under this Lease;

(ii) Lessor is not in default, and no event or condition exists which after the giving of notice or lapse of time or both would constitute an event of default, under any mortgage, indenture, contract, agreement, judgment or other undertaking to which Lessor is a party or which purports to be binding upon Lessor or upon any of its assets, except for any such default, event or condition which, individually or in the aggregate, would not affect Lessor's ability to perform its obligations under this Lease or any such mortgage, indenture, contract, agreement, judgment or other undertaking;

(iii) the execution, delivery and performance by Lessor does not require the approval or the consent of any stockholder of Lessor or of any trustee or holder of any indebtedness or obligation of Lessor;

(iv) the execution, delivery and performance by Lessor of its obligations under this Lease does not require the consent or approval of, or the registration with, or the taking of any other action in respect of, and will not result in the violation of, any Federal or New York State law relating to the regulation of banks, or any law, rule or regulation presently in effect of any Federal or New York State bank regulatory agency;

(v) there are no actions, suits or proceedings pending or threatened which will, if determined adversely to Lessor, materially adversely affect the business, assets, operations or condition (financial or otherwise) of Lessor, or impair Lessor's ability to perform its obligations under this Lease.

SECTION 14. LAWS AND RULES

Lessee agrees to comply in all material respects, either individually or in the aggregate (including, without limitation, with respect to the use, maintenance and operation of each Rail Car), with all laws of the jurisdictions in which its operations involving the Rail Cars may extend, with the interchange rules of the Association of American Railroads (and qualify for interchange service in accordance with such interchange rules) and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Rail Cars, to the extent that such laws and rules affect the title, operation, maintenance or use of the Rail Cars, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Rail Car, Lessee will conform therewith at its own expense; provided, however, that Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not adversely affect the property or rights of Lessor under this Lease. Lessee shall obtain and maintain any licensing and registration of the Rail Cars as is required by Federal, State or local law or regulation.

SECTION 15. MAINTENANCE

15.1. Maintenance. Lessee agrees that, at its own cost and expense, it will (i) maintain and service each Rail Car (including any parts installed on or replacements made to any Rail Car and considered an accession thereto as herein below provided) which is subject to this Lease so that each Rail Car, and each component thereof, will remain (a) in good operating order and in the same operating order, repair and condition as when originally delivered to Lessee, reasonable wear and tear excepted, and (b) in compliance with any and all applicable laws, regulations, requirements and rules, including, without limitation, those set forth in Section 14 hereof and (ii) maintain all records, logs and other materials required by the Association of American Railroads or the Department of Transportation, or any other governmental authority having jurisdiction over the Rail Cars or Lessee, to be maintained in respect of each Rail Car. Except for alterations or changes required by law, the Lessee shall not, without the prior written approval of the Lessor, effect any permanent structural change in the design, construction or body of the Rail Cars or appurtenances thereto which will materially change the value, utility or useful life of the Rail Cars.

15.2. Additions and Accessions. (i) Lessee, at its own cost and expense, may from time to time make such

other additions, modifications and improvements to the Rail Cars during the term of this Lease as are readily removable without causing material damage to the Rail Cars (and do not adversely and materially affect the value, utility and remaining useful life of the Rail Cars). The additions, modifications and improvements made by Lessee under the preceding sentence shall be owned by Lessee, except to the extent such additions, modifications or improvements are made (a) in replacement or substitution for, and not in addition to, any part originally incorporated or installed in a Rail Car at the time of the acceptance thereof hereunder or (b) in order to comply with Section 14 and 15.1 hereof.

(ii) Any and all parts installed on and additions and replacements made to any Rail Car which are not readily removable without causing material damage to such Rail Car shall constitute accessions to such Rail Car and full ownership thereof free from any Lien shall immediately be vested in Lessor.

SECTION 16. INDEMNIFICATION

The Lessee assumes liability for, and shall indemnify, protect, save and keep harmless each Indemnified Person (which shall include Lessor and its agents, servants, successors and assigns) hereof from and against, any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, including legal fees and expenses, of whatsoever kind and nature (herein collectively called "Indemnified Matters") imposed on, incurred by or asserted against any Indemnified Person in any way relating to or arising out of (i) the manufacture, restoration, acquisition, construction, installation, purchase, delivery, ownership, purchase, lease, sublease, possession, rental, use, condition, operation, transportation, return, sale, replacement, storage or disposition of the Rail Cars or any part thereof (including, without limitation, Indemnified Matters in any way relating to or arising out of latent or other defects, whether or not discoverable by the Lessee or any other person, injury to persons or property, patent, trademark or invention rights, or strict liability in tort), or (ii) this Lease or any of the other documents or any of the transactions contemplated hereby or thereby, or any other document or instrument hereafter executed and delivered pursuant to the terms hereof or thereof or the enforcement of any of the terms of this Lease or any of the other documents, or (iii) the enforcement of any agreement, restriction or legal requirement affecting the Rail Cars or any part thereof or the ownership, operation or use of the Rail Cars or any part thereof; provided, however, that the Lessee shall not be required to indemnify any Indemnified Person for (A) Indemnified Matters resulting from the gross negligence or wilful misconduct of such Indemnified Person, or (B)

Indemnified Matters in respect of the Rail Cars which arise from acts or events that occur after the termination of this Lease and the return of Rail Cars to the Lessor in accordance with Section 21 hereof (unless such termination shall have occurred as a result of this Lease having been declared in default pursuant to Section 17 hereof), or (C) Indemnified Matters resulting from the breach of any representation, warranty or covenant made by such Indemnified Person herein, or (D) Indemnified Matters described in Section 9 hereof except to the extent provided therein.

The Lessee shall be obligated under this Section 16 irrespective of whether the Indemnified Person shall also be indemnified with respect to such Indemnified Matters elsewhere under this Lease or under any other document or by any other person, and the Indemnified Person may proceed directly against the Lessee under this Section 16 without first resorting to any such other rights of indemnification. With respect to any payment or indemnity hereunder, such payment or indemnity shall include any amount necessary to hold any Indemnified Person receiving such payment or indemnity harmless on an After-Tax Basis.

In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person (it being understood that Lessee shall direct the defense of such action, suit or proceeding), and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. The Lessee and each Indemnified Person each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against; provided, however, that such Indemnified Person's failure to give such notice shall not adversely affect the rights of any other Indemnified Person to indemnification hereunder and in no event shall Lessee have any right or remedy against an Indemnified Person for failure to give such notice except to set-off against the indemnity otherwise payable to such Indemnified Person the damages suffered by Lessee directly caused by such failure to give notice.

After the payment in full to an Indemnified Person by the Lessee in respect of any Indemnified Matter pursuant to this Section 16, if such Indemnified Person shall receive any payments in respect of such Indemnified Matter from any person other than the Lessee, such Indemnified Person shall promptly pay to the Lessee the amount of such payment,

together with any interest (other than interest for the period, if any, after such Indemnified Matter was paid by such Indemnified Person until such Indemnified Matter was paid or reimbursed by the Lessee) received by such Indemnified Person on account of such payment.

Nothing in this Section 16 shall be deemed to constitute a guarantee by the Lessee of the residual value of the Rail Cars.

The indemnities contained in this Section 16 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Section 16 shall be deemed to create any rights of subrogation which do not already exist in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

SECTION 17. DEFAULT

17.1. Events of Default; Remedies. The following events shall constitute an event of default ("Event of Default") under this Lease:

(i) Lessee shall fail to make any payment provided for in Sections 5.1 and 8.1 hereof, and such default shall continue for 10 days;

(ii) Lessee shall at any time fail to comply with the provisions of Section 8 hereof regarding the maintenance of insurance;

(iii) Lessee shall fail to perform or observe any other of the covenants, conditions and agreements on the part of Lessee contained in this Lease and such default shall continue for 30 days after written notice from Lessor;

(iv) any representation or warranty made by Lessee herein or in any certificate or statement furnished to Lessor by Lessee, pursuant to or in connection with this Lease, shall have been breached, or shall have been untrue or misleading in any material respect as of the date of making thereof;

(v) Lessee shall make an assignment for the benefit of creditors or shall fail generally to pay its debts as they become due; or any order, judgment or

decree shall be entered adjudicating Lessee bankrupt or insolvent; or Lessee shall petition or apply to any tribunal for the appointment of a trustee, receiver, custodian or liquidator of Lessee or of any substantial part of its assets or shall commence any proceedings or case relating to Lessee or any substantial part of its assets under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect; or any such petition or application shall be filed, or any such proceedings or case shall be commenced, against Lessee and Lessee by any act shall indicate its approval thereof, consent thereto or acquiescence therein; or

(vi) any order, judgment or decree shall be entered appointing any such trustee, receiver, custodian or liquidator or approving a petition in any such proceedings and such order, judgment or decree shall remain unstayed and in effect for more than 60 days; or any order, judgment or decree shall be entered in any proceedings or case against Lessee decreeing its dissolution and such order, judgment or decree shall remain unstayed and in effect for more than 60 days.

then, in any such case, Lessor, at its option, may declare this Lease in default, and, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to Lessee terminate the Lease of the Rail Cars to Lessee, whereupon all rights of Lessee to the use of the Rail Cars shall absolutely cease and terminate as though such Lease had never been made, except that Lessee shall remain liable as herein provided. Thereupon Lessor may by its agents enter upon the premises of Lessee or other premises, insofar as Lessee may be lawfully authorized to so permit, where any of the Rail Cars may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Rail Cars and thenceforth hold, possess, sell, operate, lease and enjoy the same free from any right of Lessee, or its successors or assigns (except that Lessor shall have no right to any product in the Rail Cars and shall give Lessee access to remove such product if doing so does not interfere with the sale or other disposal of the Rail Cars by the Lessor, provided, however, that Lessor shall not be liable for the loss or destruction of any

such product), to use the Rail Cars for any purposes whatsoever and without any duty to account to Lessee for such action or inaction or for any proceeds arising therefrom (any such proceeds to be first applied, after payment of expenses, to Lessee's obligations hereunder). Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due. In addition, Lessor shall be entitled to recover forthwith from Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that Lessor, in its judgment, shall specify:

(I) a sum, with respect to each Rail Car, which represents the excess of the then present value of the entire unpaid balance of all rentals hereunder which would, but for Lessee's default, have accrued hereunder from the date of such default to the end of the Basic Term or Renewal Term, as the case may be (to be computed at the Discount Rate, computed for the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated), over (A) the then present value of the Fair Market Rental Value determined in accordance with Section 20.3 obtainable at that time for such Rail Car (to be computed at the Discount Rate, computed for the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated), or (B) if such Rail Car is sold in a good faith transaction, the net proceeds of the sale; or

(II) the sum of an amount equal to the excess, if any, of the Stipulated Loss Value as of the date on or next succeeding the date of termination for which a Stipulated Loss Value is specified, over the amount determined at Lessee's expense by a nationally recognized independent appraiser selected by Lessor to be the Fair Market Sale Value of such Rail Car at such time;

provided, however, that in the event Lessor shall have sold any Rail Car in a good faith transaction, Lessor in lieu of collecting any amounts payable by Lessee pursuant to the preceding clause (II) with respect to such Rail Car shall demand that Lessee pay to Lessor and Lessee shall pay to Lessor on the date of such sale an amount equal to the excess, if any, of the Stipulated Loss Value for such Rail Car as of the Basic Rent payment date on or next succeeding the date of termination for which a Stipulated Loss Value is specified over the net proceeds of such sale; or

(III) exercise any other right or remedy available to it by law or by agreement, and in any event may recover, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and any and all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Rail Car.

17.2. Remedies Not Exclusive; Waiver. The remedies provided in this Lease in favor of Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law.

17.3. Failure to Exercise Rights Is Not Waiver. The failure of Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Lessor.

17.4. Notice of Event of Default to Lessor. The Lessee also agrees to furnish the Lessor, promptly upon any responsible officer becoming aware of any condition which constitutes an Event of Default under Section 17.1(v) or (vi) of this Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 18. RETURN OF RAIL CARS UPON DEFAULT

18.1. Return of Rail Cars. If the lease of the Rail Cars to the Lessee shall terminate pursuant to Section 17 hereof, the Lessee shall forthwith deliver possession of the Rail Cars to the Lessor and shall give prompt telegraphic and written notice to the Association of America Railroads and all railroads having possession of any Rail Car so to return such Rail Cars. Each Rail Car returned to the Lessor pursuant to this Section 18 shall be in the condition required by Section 21 hereof. For the purpose of delivering possession of any Rail Cars or Rail Car to the Lessor as above required, the Lessee shall its own cost, expense and risk:

(a) Forthwith and in the usual manner place such Rail Cars upon such storage tracks as shall reasonably be designated by the Lessor (except that Lessee shall have no obligation to store the Rail Cars on its storage tracks if, in the opinion of the Lessee, another storage area of similar quality can be located),

(b) Cause such units to be stored on such tracks without charge for insurance, rent or storage for up to 180 days until such Rail Cars have been sold, leased or otherwise disposed of by the Lessor, thereafter the expense of storage and risk of loss shall be for the account of Lessor, and

(c) cause the Rail Cars to be moved to the nearest interchange point or points within the continental United States as shall be designated by the Lessor, except that Lessee shall have no obligation to move any such Rail Car more than once at the request of the Lessor.

The delivery, storage and transporting of the Rail Cars as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to deliver, store and transport the Rail Cars. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Rail Car, to inspect the same. In the event that the Rail Car or any thereof are sold the Lessee shall pay to the Lessor a daily rental equal to the monthly rental amount which is set forth on Schedule C hereto divided by 30 for each such Rail Car which shall not have been delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

18.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 18, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Rail Car to the Lessor, to demand and take possession of such Rail Car in the name and on behalf of the Lessee from whomsoever shall be in possession of such Rail Car at the time.

SECTION 19. ASSIGNMENT, POSSESSION AND USE

19.1. Lessee's Rights to Use the Rail Cars, to Permit Use Thereof by Others and to Sublease the Rail Cars.

(i) So long as no Event of Default shall have occurred and be continuing hereunder, Lessee shall be entitled to the possession and use of the Rail Cars in the United States, Mexico and/or Canada only in accordance with the terms of this Lease. Lessee agrees to use or cause the Rail Cars to be used such that not less than 80% of all income, deductions and credits attributable to such use will be treated as from U.S. sources (as defined in Section 861 of the Code and applicable regulations thereto).

(ii) So long as no Event of Default shall have occurred or be continuing hereunder, Lessee shall be entitled to the possession and use of the Rail Cars in the United States, Mexico and/or Canada only upon lines of railroad owned or operated by it or upon lines of railroad over which Lessee has trackage or other operating rights or over which railroad equipment of Lessee is regularly operated and shall be entitled to permit the use of the Rail Cars upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and, with Lessor's prior written consent to assign its rights to the Rail Cars (any assignment without such consent being void), or (without Lessor's consent) to sublease the Rail Cars, but only upon and subject to all the terms and conditions of this Lease; provided, that without Lessor's prior written consent (which shall not be unreasonably withheld), no such sublease shall be to a sublessee which is not a United States or Canadian corporation, and provided Lessee's obligations hereunder shall continue in full force and effect as the obligations of a principal and not of a surety; and provided, further, that Lessee shall not knowingly without Lessor's prior written consent assign or sublease the Rail Cars to, or permit the assignment or sublease of the Rail Cars to, or permit the assignment or sublease of the Rail Cars by, any person who shall then be engaged in any proceedings or case for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions of indebtedness; provided, however, that, if

Lessee uses, subleases or permits the use of any Rail Car in Canada (or any Province or Territory thereof) or Mexico (or any State or the Federal District thereof) Lessee shall, except as otherwise provided in Section 22 hereof first have (a) taken all necessary action to protect the right, title and interest of Lessor in such Rail Cars to be subleased or used and (b) furnished Lessor with an opinion of Canadian and/or Mexican counsel; as the case may be, satisfactory to Lessor to the effect that such action is all that is necessary to perfect and protect the right, title and interest of Lessor in such Rail Cars. Lessee may receive and retain compensation for the use of any of the Rail Cars from railroads or other entities so using such Rail Cars. Each sublease or assignment permitted by this paragraph, (a) shall be expressly subject and subordinate to all of the provisions of this Lease and shall not extend beyond the term hereof, (b) shall expressly require the Rail Cars subject thereto to be returned as directed by Lessor upon notice to such assignee or sublessee that an Event of Default shall have occurred and be continuing and (c) shall expressly prohibit any further sublease or assignment of the Rail Cars subject thereto. Lessee shall, within thirty (30) days after the execution of any sublease for 50% or more of the Rail Cars for a term of one year or longer, deliver a conformed copy thereof to Lessor.

19.2. Transfers by Lessee Through Merger, Acquisition or Consolidation. Lessee shall not merge or consolidate with any other corporation or sell, lease or transfer or otherwise dispose of all or a substantial part of its assets unless (i) immediately after giving effect to the consummation of such transaction, no Default or Event of Default under the Lease shall have occurred and be continuing, and (ii) the surviving, resulting or transferee corporation (a) is a corporation duly organized and validly existing under the laws of any state of the United States or the District of Columbia, and (b) shall execute and deliver an agreement satisfactory in form and scope to Lessor whereby the transferee agrees to be bound by all the terms of, and assumes all of Lessee's obligations under, this Lease.

19.3. Lessee's Duty To Discharge Encumbrances. The Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than Lessor's Liens) which may be imposed during the term hereof, during the period the Lessee is obligated to pay rental hereunder or during the period any Rail Car is in the possession of the Lessee following default, on or with respect to any Rail Car (including any accession thereto) or the interest of the Lessor or the Lessee therein; except that this covenant will not be breached by reason of Permitted Liens.

19.4. Transfer by Lessor. This Lease may be assigned in whole or in part by the Lessor without the consent of the Lessee or Helm, provided that such assignee is (i) an affiliate of Lessor meeting the test set forth in the following clause (ii) or, if not, the obligations of which hereunder are guaranteed by Lessor or an entity meeting such test or (ii) a United States bank or financial institution or a leasing or similar company with a combined capital and surplus or net worth, as the case may be, of at least \$50,000,000 or (iii) a majority-owned United States subsidiary of an entity meeting such test, provided that such entity delivers to Lessee a guaranty of such assignee's obligations hereunder (pursuant to which Lessee has immediate recourse to the guarantor without first pursuing remedies against the assignee), but the Lessee shall not be under any obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor and no greater obligations will be imposed on the Lessee on account of such assignment. In addition, Lessor may not assign this lease in whole or in part to a direct or indirect competitor of Lessee or an affiliate of such competitor, provided that Lessee's operation of a leasing business shall not be a basis upon which Lessor is prohibited from assigning by this sentence. The foregoing restrictions shall not apply to an assignment as collateral security. All the rights of the Lessor hereunder shall inure to the benefit of the assigns of Lessor.

SECTION 20. RENEWAL OPTION; PURCHASE OPTION

20.1. Renewal for Successive Periods. Provided that the lease of the Rail Cars to the Lessee has not been earlier terminated and that no Default or Event of Default shall have occurred and be continuing hereunder at the time of election and renewal, Lessee may, by written notice delivered to Lessor (which notice shall be irrevocable) not less than 180 days prior to the end of the Basic Term or any renewal term of this Lease in respect of all and not less than all Rail Cars still subject to this Lease, elect to renew this Lease for a period of four years from its then existing expiration date (each such period a "Renewal Term"). Lessee may only make such election once. The amount of rentals for any such Renewal Terms ("Renewal Rent") shall be an amount equal to the Fair Market Rental Value as of the end of the Basic Term or the immediately preceding Renewal Term of the Lease, as the case may be, in each case payable in monthly payments, in advance, on each monthly anniversary of the final day of the Basic Term in each month of such Renewal Term. In the event of any such renewal, the Stipulated Loss Value payable in respect of a Casualty Occurrence involving any Rail Car shall be determined by mutual consent of Lessor and Lessee, failing which, such Stipulated Loss Value shall

be the Fair Market Sale Value thereof immediately succeeding such Casualty Occurrence (determined as provided below).

20.2. Purchase Option. (i) Provided that no Event of Default has occurred and is continuing hereunder at the time of election and purchase, Lessee may, by written notice delivered to Lessor not less than 180 days prior to the end of the Basic Term or then current Renewal Term hereof (which notice shall be irrevocable), elect to purchase all and not less than all Rail Cars then subject to this Lease, at a purchase price equal to the Fair Market Sale Value of such Rail Cars on such day, payable on the last day of the Basic Term or Renewal Term as the case may be.

(ii) Provided that the lease of the Rail Cars to the Lessee has not been earlier terminated and that no Default or Event of Default has occurred and is continuing hereunder, upon payment of the purchase price of any Rail Car pursuant to an exercise by Lessee of its option to purchase such Rail Cars under this Section 20.2, Lessor shall execute and deliver to Lessee, or Lessee's assignee or nominee, a bill of sale for such Rail Cars such as will transfer to Lessee on an as is, where is basis, such title to the Rail Cars as the Lessor derived from Helm, free and clear of all Lessor's Liens, but without further representations or warranties, provided that Lessee shall pay all taxes (including sales tax) and expenses involved in filings or recordings in connection with such transfer.

20.3. Determination of Fair Market Rental Value and Fair Market Sales Value. (i) Fair Market Rental Value shall be determined for the Rail Cars on the basis of, and shall be equal in amount to, the value which would be obtained in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to buy, sell or lease and on the assumption that the Rail Cars are in the condition required by Sections 14, 15 and 21 hereof and are free and clear of liens, for the lease of the Rail Cars pursuant to a lease having terms and conditions (other than rent and lease term) similar to the terms and conditions of this Lease.

(ii) Fair Market Sales Value shall be determined for the Rail Cars on the basis of, and shall be equal in amount to, the purchase price which would obtain in an arm's length transaction between an informed and willing purchaser (other than a dealer in used goods) and an informed and willing seller (other than a dealer) under no compulsion to purchase or sell on the assumption that the Rail Cars are in the condition required by Sections 14, 15 and 21 hereof and are free and clear of liens, and, in such determination, cost of removal from the location of current use shall not be a deduction from such purchase price, except for cases in which

Fair Market Sales Value is to be determined for the purpose of calculations required by Section 17 hereof, in which case such value shall be determined on a where is, as is basis without the foregoing assumptions.

(iii) If, after 60 days from the giving of notice to Lessor of Lessee's election to renew the Lease subject to Section 20 or to purchase the Rail Cars pursuant to Section 20, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value of the Rail Cars, the Fair Market Value shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such Fair Market Value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 25 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 25 days after such notice is given, either party may apply to the American Arbitration Association to make such appointment, and both parties shall be bound by an appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value of such Rail Cars within 55 days of such appointment(s). If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Value by the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Value. The appraiser proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any such judicial or other procedures. The expenses of the appraisal procedure shall be divided equally between Lessee and Lessor.

SECTION 21. RETURN OF RAIL CARS UPON EXPIRATION OF TERM

On or before the expiration of the Basic Term or any Renewal Term as the case may be, Lessee shall return each Rail Car to Lessor in the condition hereinafter provided, by causing all Rail Cars to be moved, at Lessee's expense and risk, onto storage facilities in such States as to which Lessor shall specify in writing. At Lessor's request, Lessee shall use its best efforts to place the Rail Cars on storage tracks or facilities owned by Lessee and shall store the Rail Cars at Lessee's risk of loss on such storage tracks or facilities for up to 90 days after the expiration of the Lease Term without charge to Lessor (and thereafter Lessor shall pay to Lessee the fair market value of such storage); provided however, Lessor shall remove the Rail Cars from Lessee's storage tracks or facilities within 90 days after the initial 90 day storage period; provided further, however, that if Lessee provided Lessor with written notice at least 270 days prior to the end of the Lease Term (which notice shall be irrevocable) that Lessee did not intend to renew the lease of or purchase Rail Cars at the end of such term, then, Lessee shall have no obligation to store the Rail Cars on its tracks or facilities unless otherwise agreed and during such storage period Lessor shall be responsible for any insurance and risk of loss in respect of such Rail Cars and Lessee shall not be liable, except, if applicable, in the case of gross negligence or willful misconduct of Lessee (a "Lessee Fault") for any damage to such Rail Cars while in storage on Lessee's track or facilities. Lessor shall bear the risk of loss to the Rail Cars following the initial 90 day storage on Lessee's storage tracks or facilities. All storage fees payable on tracks or facilities not owned by Lessee through the initial 90 day storage period shall be paid directly by Lessee unless Lessee gave the 270 days' notice described immediately above, in which case such fees shall be paid directly by Lessor. The assembling, delivery, storage and transporting of the Rail Cars as herein before provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to cause the assembling, delivery, storage and transporting of the Rail Cars. Each Rail Car returned to Lessor pursuant to this Section 21 shall (i) be in the condition required by Section 14 and Section 15 hereof, (ii) be suitable for service on a Class I Railroad, (iii) be free and clear of all liens, and (iv) have attached or affixed thereto any special device considered an accession thereto as provided in Section 15.2 hereof and have removed therefrom any such device not so considered an accession. If any Rail Car suffers a Casualty Occurrence attributable to the Lessee at a time when Lessee is responsible for the risk of loss or insurance hereunder during any storage period provided for in

this Section 21, Lessee shall pay to Lessor the Stipulated Loss Value of such Rail Car as determined in accordance with Section 8 hereof. Lessee shall pay rental at the rate per day equal to the monthly rental factor set forth on Schedule C hereto divided by 30 for any Rail Car not returned to Lessor or placed in storage in accordance with the terms hereof immediately upon expiration or the termination of the initial or any extended term of this Lease until return. Nothing contemplated by this Section 21, including payment by Lessee of the above-specified amounts, shall be deemed to relieve Lessee from its obligations to deliver and store the Rail Cars or affect Lessor's rights and remedies with respect to such obligation. All risk of loss and transportation costs of the Rail Cars incurred when moving the Rail Cars from such storage tracks or facilities as provided herein shall be for Lessor's account.

SECTION 22. RECORDING

Lessee, at its own expense, will cause this Lease, all Equipment Schedules and all other supplements to this Lease to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303. Lessee, at its own expense, will further cause this Lease and/or appropriate financing statements to be filed and recorded in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Minnesota (and, if Lessee changes its chief place of business, in any other state) in the same manner as if Lessor's interest in this Lease represented a security interest and in any other state of the United States of America or the District of Columbia where filing is necessary or reasonably requested by Lessor. Lessee in addition will from time to time do and perform any act or execute, acknowledge and deliver to Lessor any and all further instruments required by law or any additional documents reasonably requested by Lessor for the purpose of proper protection, to their satisfaction, of its interest in the Rail Cars, or for the purpose of carrying out the intention of this Lease. This Lease shall be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 prior to the delivery and acceptance hereunder of any Rail Car. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all instruments required by the law of any jurisdiction in which use of the Rail Cars is permitted by Section 19 or reasonably requested by the Lessor for the purpose of proper protection of the title of Lessor and of fully carrying out and effectuating this Lease and the intent hereof; provided, however, that Lessee shall not be required to take any action in respect of any jurisdiction outside the United States if (1) Lessee deems such action to be unduly burdensome, (2) after giving effect to the failure to take such action, Lessee has taken all action required by

law to protect the title of Lessor to Rail Cars constituting not less than 85% of the aggregate number of all the Rail Cars then subject to this Lease and (3) any Rail Car at any time located in such jurisdiction shall have been marked with the markings specified in Section 7.

SECTION 23. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be in writing, and any such notice shall become effective upon personal delivery thereof 24 hours following delivery to or deposit with a recognized overnight delivery service or five days after the date on which it shall have been deposited in the United States mail with return receipt requested, addressed as follows:

(i) if to Lessor, at

THE CIT GROUP/ EQUIPMENT FINANCING, INC.
1400 Renaissance Drive
Park Ridge, Illinois 60068
Attention: Vice President/Credit

with a copy to

THE CIT GROUP/EQUIPMENT FINANCING, INC.
270 Park Avenue
New York, New York 10017
Attention: Senior Vice President/Credit

(ii) if to Lessee, at

Cargill, Incorporated
P.O. Box 5621
Minneapolis, Minnesota 55440
Attention: General Transportation Manager,
Salt Division

(iii) if to Helm, at

Helm Financial Corporation
One Embarcadero Center
San Francisco, California 94111
Attention: President

or addressed to any party at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 24. LESSOR'S RIGHT TO PERFORM

If Lessee fails to perform or comply with any of its agreements contained herein, Lessor may upon notice to Lessee (provided, that such notice shall not be required at any time Lessee is in default under Sections 17.1(v) or (vi)) perform or comply with such agreement, and the amount of the reasonable costs and expenses of Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Reference Rate, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by Lessor shall be deemed a waiver of the rights and remedies of Lessor or any assignee of Lessor against Lessee hereunder.

SECTION 25. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 26. EFFECT AND MODIFICATION OF LEASE

This Lease, the Bills of Sale and the Equipment Schedules exclusively and completely state the rights of Helm, Lessor and Lessee with respect to the purchase and sale and the leasing of the Rail Cars and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease, the Bills of Sale and the Equipment Schedules and no waiver of any of its provisions or conditions and no amendment hereto shall be valid unless in writing and signed by duly authorized signatories for the party against whom enforcement of such amendment is sought.

SECTION 27. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota without regard to conflicts of law provisions; provided, however, to the extent permitted by law, the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303.

SECTION 28. IMMUNITIES; NO RECOURSE

No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue or any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

SECTION 29. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Lessor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

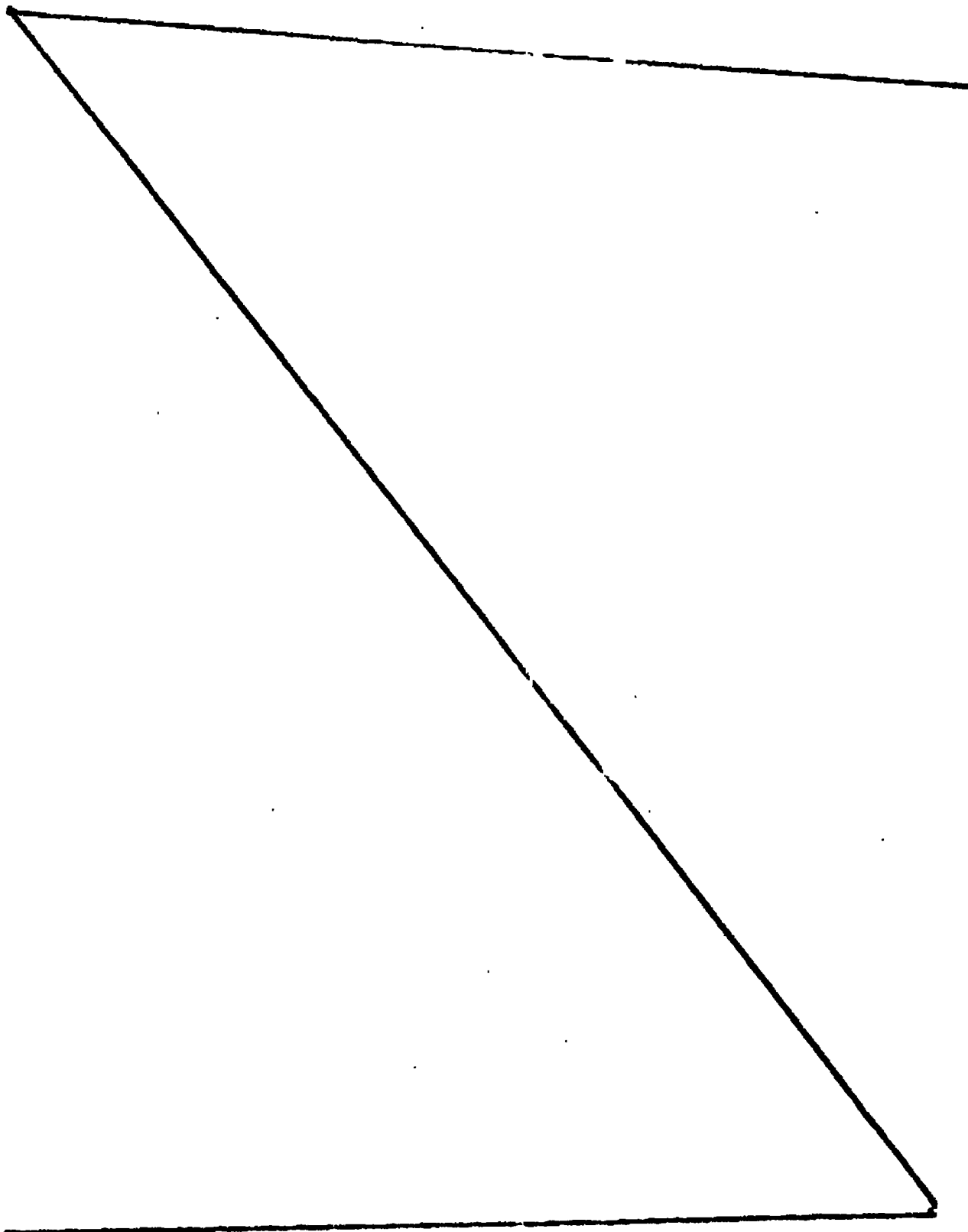
SECTION 30. CONFIDENTIALITY

Lessor agrees that all financial statements furnished to Lessor by Lessee shall be kept confidential, subject to the proviso of the next sentence. All other information furnished to Lessor under the various provisions of this Agreement which, if written, is labeled or, if verbal, is otherwise designated "confidential" by Lessee at the time such information is furnished will be treated by Lessor in a responsible manner, and the confidentiality thereof maintained; provided however, that such material will not be disseminated except to officers, directors, employees and professional consultants for Lessor who, for proper reasons consistent with the purposes for which this information is furnished, need access to such information, or to such other parties to whom Lessor may have a duty or legal obligation of disclosure.

SECTION 31. QUIET ENJOYMENT

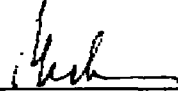
During the Lease Term and so long as no Event of Default has occurred and is continuing hereunder, Lessor covenants and agrees that Lessee shall have the right to uninterrupted use and enjoyment of the Rail Cars on the terms and conditions provided herein without any interference from Lessor, or those claims resulting from or through Lessor's Liens or from Lessor's assignees hereunder. So long as no Event of Default has occurred and is continuing hereunder Lessee's right to uninterrupted use and enjoyment of the Rail Cars on the terms and conditions provided herein shall not be

affected by the bankruptcy, insolvency, dissolution, reorganization, or any like proceeding or financial difficulties of Lessor.



IN WITNESS WHEREOF, Lessor, Lessee and Helm have executed this Purchase and Lease Agreement as of the day and year first above written.

THE CIT GROUP/EQUIPMENT FINANCING, INC.,
as Lessor

by 
Title: VICE PRESIDENT

CARGILL, INCORPORATED,
as Lessee

by _____
Title:

HELM FINANCIAL CORPORATION,
as Helm

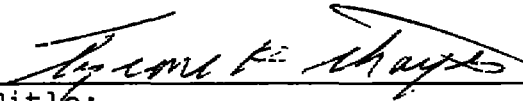
by _____
Title:

IN WITNESS WHEREOF, Lessor, Lessee and Helm have executed this Purchase and Lease Agreement as of the day and year first above written.

THE CIT GROUP/EQUIPMENT FINANCING, INC.,
as Lessor

by _____
Title:

CARGILL, INCORPORATED,
as Lessee

by 
Title:

HELM FINANCIAL CORPORATION,
as Helm

by _____
Title:

IN WITNESS WHEREOF, Lessor, Lessee and Helm have
executed this Purchase and Lease Agreement as of the day and
year first above written.

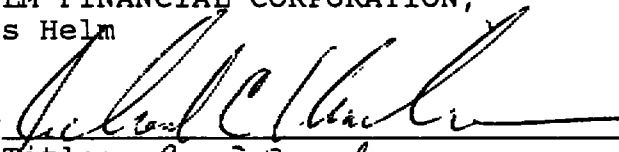
THE CIT GROUP/EQUIPMENT FINANCING, INC.,
as Lessor

by _____
Title:

CARGILL, INCORPORATED,
as Lessee

by _____
Title:

HELM FINANCIAL CORPORATION,
as Helm

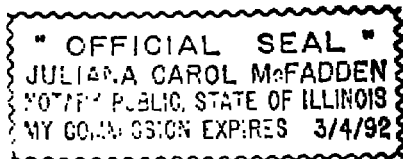
by  _____
Title: *President*

THE CIT GROUP/EQUIPMENT FINANCING, INC.

By *Hub*
Its VICE PRESIDENT

State of Illinois)
County of Peoria) ss.

On this 10th day of February, 1990, before me personally appeared *Paul J. [illegible]*, to me personally known, who, being by me duly sworn, did say that he is a *Vice President* of THE CIT GROUP/EQUIPMENT FINANCING, INC., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of the corporation.



Julia A. Carol McFadden
Notary Public

My commission expires: *March 4, 1992*

CARGILL, INCORPORATED

[Seal]

By _____

Its _____

State of Minnesota)
) ss.
County of Hennepin)

On this 28th day of December, 1990, before me personally appeared Thurmon K. Thayer, to me personally known, who, being by me duly sworn, did say that he is a Vice President, Ind. Group of CARGILL, INCORPORATED, that the seal affixed to the foregoing instrument is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mary B. Willard
Notary Public

My commission expires:



[HELM FINANCIAL CORP.]

By *Richard C. Kitchner*
Its *President*

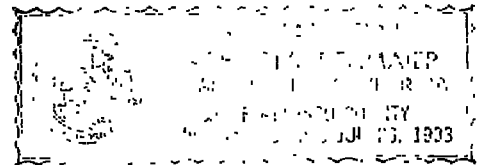
State of *California*
County of *San Francisco* ss.

On this *28th* day of *December*, 1990, before me personally appeared *Richard C. Kitchner*, to me personally known, who, being by me duly sworn, did say that he is a *President* of HELM FINANCIAL CORPORATION, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of the corporation.

Karen Staudenmaier

Notary Public

My commission expires: *July 26, 1993*



Schedule I

<u>CAR INIT</u>	<u>NUMBER</u>
CSXT	248781
CSXT	248810
CSXT	248832
CSXT	248837
CSXT	248846
CSXT	248852
CSXT	249010
CSXT	249158
LN	250000
LN	250003
LN	250004
LN	250007
LN	250010
LN	250015
LN	250016
LN	250019
LN	250023
LN	250029
LN	250036
LN	250040
LN	250045
LN	250047
LN	250051
LN	250053
LN	250056
LN	250061
LN	250063
LN	250066
LN	250069
LN	250071
LN	250073
LN	250076
LN	250077
LN	250079
LN	250081
LN	250082
LN	250086
LN	250087
LN	250094
LN	250095
LN	250096
LN	250097
LN	250098
LN	250103
LN	250104
LN	250109
LN	250113
LN	250117
LN	250125

CAR INITNUMBER

LN	250130
LN	250133
LN	250135
LN	250513
LN	250517
LN	250519
SAL	035048
SAL	035141
SAL	035187
SBD	249046
SBD	249078
SBD	249090
SCL	835044
SCL	830569
SCL	835129
SCL	835189
SCL	835201
SCL	835208
SCL	835223
SCL	848721
SDB	248756
SDB	248758
SDB	248761
SDB	248763
SDB	248766
SDB	248767
SDB	248769
SDB	248771
SDB	248773
SDB	248774
SDB	248776
SDB	248780
SDB	248785
SDB	248788
SDB	248792
SDB	248797
SDB	248803
SDB	248804
SDB	248809
SDB	248811
SDB	248818
SDB	248819
SDB	248827
SDB	248831
SDB	248835
SBD	248859
SDB	248971
SDB	248974
SDB	248975
SDB	248976
SDB	248977
SDB	248978
SDB	248979

CAR INITNUMBER

SDB	248982
SDB	248983
SDB	248986
SDB	248988
SDB	248990
SDB	248994
SDB	248999
SDB	249000
SDB	249006
SDB	249008
SDB	249011
SDB	249012
SDB	249016
SDB	249017
SDB	249022
SDB	249025
SDB	249035
SDB	249039
SDB	249049
SDB	249051
SDB	249052
SDB	249058
SDB	249063
SDB	249068
SDB	249076
SDB	249080
SDB	249084
SDB	249092
SDB	249114
SDB	249120
SDB	249121
SDB	249127
SDB	249148
SDB	249152
SDB	249692

RAIL CAR ACCEPTANCE AND EQUIPMENT SCHEDULE

Reference is made to a Purchase and Lease Agreement dated as of December 31, 1990 (the "Lease"), among Helm Financial Corporation ("Helm"); Cargill, Incorporated ("Lessee"); and C.I.T. Group/Equipment Financing, Inc. ("Lessor"). All capitalized terms not defined in this Rail Car Acceptance and Equipment Schedule have the meanings assigned thereto in the Lease.

The Lessee hereby accepts the Rail Cars identified on Schedule A hereto in accordance with the terms of the Lease. By accepting hereunder, the Lessee represents that it has inspected such Rail Cars and has found them to be in accordance with the requirements of the Lease. As further evidence of Lessee's acceptance, attached hereto as Exhibits B-1 and B-2 are the Certificates of Delivery executed pursuant to the Reconstruction Agreement.

CARGILL, INCORPORATED

By: _____

Title:

Date: _____

SCHEDULE A

(10) REBUILT 100 TON ROLLER BEARING 4750 ALUMINUM COVERED HOPPER
RAILCARS ACCEPTED ON DECEMBER 31, 1990.

NEW REPORTING MARK CAR NUMBER

ORIGINAL REPORTING

BILL OF SALE AND ASSIGNMENT

BILL OF SALE AND ASSIGNMENT, dated December 31, 1990, from HELM FINANCIAL CORPORATION, a California corporation (the "Seller"); to THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York banking corporation (the "Buyer").

WHEREAS, pursuant to the Purchase and Lease Agreement, dated as of December 31, 1990 (the "Lease"), among the Seller, the Buyer and Cargill, Incorporated, a Delaware corporation ("Cargill"), the Seller has agreed to grant, bargain, sell, assign and set over unto the Buyer and the Buyer has agreed to purchase, accept and receive certain rail cars listed and described in Appendix A hereto, together with all parts and accessories attached thereto (all such rail cars set forth in Appendix A including all parts and accessories thereto being herein collectively called the "Rail Cars");

WHEREAS, the Seller is executing and delivering this Bill of Sale to the Buyer for the purpose of selling, assigning, transferring and conveying to, and vesting in, the Buyer all its right, title and interest in the Rail Cars;

WHEREAS, simultaneously with such sale and pursuant to due authorization, the Buyer has agreed to pay the purchase price for such Rail Cars within 30 days hereof;

WHEREAS, the Seller has agreed to assign to the Buyer and the Buyer has agreed to assign certain rights of the Seller, under a certain Reconstruction Agreement.

NOW, THEREFORE, in consideration of the sum of \$1 and other good and valuable consideration, receipt of which is hereby acknowledged, the Seller hereby agrees as follows:

1. Sale of Rail Cars

(a) The Seller does hereby grant, bargain, sell, assign and set over unto the Buyer, all of the Seller's right, title and interest in and to the Rail Cars, which constitutes good and marketable title to such Rail Cars, to have and to hold all and singular the Rail Cars unto the Buyer and its successors and assigns to their own use and benefit forever.

(b) The Seller hereby warrants and covenants and agrees for the benefits of the Buyer and its successors and assigns that (i) the Rail Cars and all units and components, parts and accessories of the Rail Cars are free from any mortgage, pledge, lien, charge, encumbrances, lease or security interest and that the Seller has full right, title and authority as to all persons to sell the same as aforesaid, and the Seller

will warrant and defend all such units and components, parts and accessories, against the claims and demands of all persons whatsoever, and (ii) all amounts due and payable to the Seller with respect to the Rail Cars have been duly paid in full and no further amounts are owed or will be owing to the Seller with respect thereto.

2. Assignment of Rights

(a) The Seller does hereby sell, assign, transfer and set over unto the Buyer, its successors and assigns, all of the following rights of the Seller under or pursuant to each of the agreements listed and described in Appendix B hereto, which the Seller hereby represents to be the only agreements, documents and instruments relating to the [purchase and] reconstruction of Rail Cars (each such agreement, as the same may have been amended, supplemented, or otherwise modified to the date hereof and as the same may, as hereinafter provided, be amended, supplemented or otherwise modified after the date hereof, called an "Assigned Agreement"), namely: (i) all rights to assert all claims in respect of the Rail Cars or any unit, component, part or accessory of the Rail Cars, against Corbin Railway Service Company, a Kentucky Corporation (the "Restorer"), including, without limitation, all claims arising under the warranty and indemnity provisions contained in each such Assigned Agreement and (ii) all rights to enter into or consent to any supplement, amendment or other modification (any of the foregoing being herein called an "Amendment") of any of the terms of any Assigned Agreement to the extent such supplement, amendment, modification or waiver would affect in any respect any of the rights referred to in the immediately preceding clause (i) or in this clause (ii) of this paragraph 2(a). All such rights assigned pursuant to this paragraph 2(a) are hereinafter sometimes referred to as the "Assigned Rights".

(b) In furtherance of the assignment provided for in the foregoing paragraph 2(a), the Seller does hereby irrevocably constitute the Buyer, its successors and assigns, the Seller's true and lawful attorney with full power (in the name of Seller or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due and to become due, in respect of the Rail Cars, under, or arising out of, each Assigned Agreement, to the extent that the same is included in the Assigned Rights, to endorse any checks or other instrument or orders in connection therewith and to fill any claims or take any action or institute any proceedings with respect thereto which the Buyer may deem necessary or advisable under the circumstances.

(c) It is expressly agreed that, anything herein contained to the contrary notwithstanding: (i) the Seller shall at all times remain liable to the Restorer under each Assigned Agreement to perform all of the duties and obligations of the Buyer thereunder to the same extent as if this instrument had not

been executed; (ii) the exercise by the Buyer of any of the rights assigned hereunder shall not release the Seller from any of the duties or obligations to the Restorer under any Assigned Agreement; and (iii) the Buyer shall have no obligation nor liability under any Assigned Agreement by reason of, or arising out of, this instrument and shall not be obligated to perform any of the obligations or duties of the Seller under any Assigned Agreement, or to make any payment or to make any inquiry as to the sufficiency of any payment received by any of them or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder.

(d) The Seller does hereby represent and warrant that each Assigned Agreement is in full force and effect and is enforceable in accordance with its terms and the Seller is not in default thereunder. The Seller does hereby further represent and warrant that the Seller has not assigned or pledged, and hereby covenants that it will not assign or pledge so long as this instrument shall remain in effect, the whole or any part of the Assigned Rights to anyone other than the Buyer.

(e) The assignment provided for herein of the Assigned Rights shall be and become effective immediately upon execution and delivery hereof by Seller.

3. Further Assurances

At any time and from time to time, upon the written request of the Buyer, the Seller will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Buyer may reasonably request in order to obtain the full benefits of this instrument and the rights and powers herein granted. The Seller will, even without receiving any request from the Buyer, provide the Buyer with true, correct and complete copies of any amendments or supplements after the date hereof to each Assigned Agreement, promptly upon the Seller's approval of any such amendment or supplement.

4. Notice

All communications and notices provided for herein shall be in writing and shall become effective, if delivered by hand, when received, or, if mailed, on the fifth Business Day after the same is deposited in the United States Mail, with proper postage for first class, registered mail prepaid, addressed to the respective addresses of the addressees set forth below, or in the case of any such addresses, to such other address as such addressee shall have furnished to the other parties listed below:

- (i) if to the Buyer, to it at:

THE CIT GROUP/EQUIPMENT FINANCE, INC.
1400 Renaissance Drive
Park Ridge, Illinois 60068
Attn: Vice President - Credit

with a copy to:

THE CIT GROUP/EQUIPMENT FINANCE, INC.
270 Park Avenue
New York, New York 10017
Attn: Senior Vice President - Credit

- (ii) if to the Seller, to it at:

Helm Financial Corporation
One Embarcadero Center
San Francisco, California 94111
Attn: Senior Vice President

- (iii) if to the Restorer, to it at the address
set forth below such Restorer's signature on the
Consent to Assignment appended hereto.

5. Concerning the Restorer

Nothing herein contained shall subject the Restorer to any liability to which it would not otherwise be subject under any Assigned Agreement or modify in any respect such Restorer's contract rights. The Seller and the Buyer agree that the Restorer shall have no responsibility for compliance by the Seller or the Buyer with any term or provision hereof.

6. Consent

The Seller shall cause the Restorer to consent to this Bill of Sale and Assignment by executing a consent substantially in the form of Appendix C hereto simultaneously with the sale of the Rail Cars pursuant hereto.

7. Miscellaneous

This instrument may be executed and delivered in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any provision of this instrument which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Seller hereby waives any provision of law which renders any

provision hereof prohibited or unenforceable in any respect. No term nor provision of this instrument may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of this change, waiver, discharge or termination is sought. This instrument shall inure to the benefit of, and be binding upon and be enforceable by the successors and assigns of, the Seller, the Buyer and Cargill. This instrument is being delivered in the State of Minnesota and shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Minnesota.

IN WITNESS WHEREOF, the Seller has caused this instrument to be executed by its duly authorized officers on and as of the date first written above.

HELM FINANCIAL CORPORATION

By _____
Title:

APPENDIX A

(10) REBUILT 100 TON ROLLER BEARING 4750 ALUMINUM COVERED HOPPER
RAILCARS ACCEPTED ON DECEMBER 31, 1990.

NEW REPORTING MARK CAR NUMBER

ORIGINAL REPORTING

APPENDIX B

LIST OF ASSIGNED AGREEMENTS

1. Reconstruction Agreement, dated as of November 16, 1990, among Helm Financial Corporation, Cargill, Incorporated, and Corbin Railway Service Company.

CONSENT TO ASSIGNMENT

CONSENT TO ASSIGNMENT, dated as of December 31, 1990, of Corbin Railway Service Company ("Restorer").

1. The Restorer hereby consents to the assignment by Helm Financial Corporation, a California corporation ("Helm") of all Helm's rights, title and interest under that certain Reconstruction Agreement, dated as of November 16, 1990 (the "Reconstruction Agreement"), among the Restorer, Helm and Cargill, Incorporated ("Cargill") relating to the restoration of the rail cars (herein called the "Rail Cars") described in such Reconstruction Agreement to the CIT GROUP/EQUIPMENT FINANCING, INC., a New York banking corporation, ("CIT") and the Restorer also consents to CIT's further assignment of such rights, title and interest to Cargill, pursuant to a Purchase and Lease Agreement among Helm, CIT and Cargill, dated as of December 31, 1990.
2. The Restorer hereby represents and warrants that each Rail Car sold to CIT by Helm as set forth in any Bill of Sale and Assignment to which this consent is an appendix is free and clear of any liens imposed by the Restorer or any other liens arising from the reconstruction of such Rail Cars, and the Restorer waives any future right it may have to impose any lien or encumbrance upon any such Rail Car.
3. The Restorer warrants that the Reconstruction Agreement is a valid and binding obligation of Restorer, enforceable against Restorer in accordance with its terms.

CORBIN RAILWAY SERVICE COMPANY

By _____
Title: